

EPA Region 1 Determination of Federal Action's Consistency with Enforceable Policies of New York's Coastal Zone Management Program (July 20, 2016)

I. Introduction and Summary of EPA's Proposed Action

The New England Office (Region 1 or the Region) of the United States Environmental Protection Agency (EPA) is proposing to designate a dredged material disposal site in the eastern region of Long Island Sound under Sections 102(c) and 106(f) of the Marine Protection, Research, and Sanctuaries Act (MPRSA). 33 U.S.C. §§ 1412(c) and 1416(f). *See also* 40 C.F.R. § 228.4(e). This site would be named the Eastern Long Island Sound Disposal Site (ELDS).

On April 27, 2016, EPA Region 1 published a Proposed Rule in the Federal Register informing the public of the proposed designation of the ELDS and seeking public review and comment on the proposal. 81 Fed. Reg. 24748-24767 (April 27, 2016) (EPA's April 2016 Proposed Rule). EPA's April 2016 Proposed Rule also identified and sought comment on two additional site designation alternatives – the Niantic Bay Disposal Site (NBDS) and the Cornfield Shoals Disposal Site (CSDS). *See* 81 Fed. Reg. 24748, 24749. On April 27, 2016, EPA also released for public review and comment a Draft Supplemental Environmental Impact Statement (DSEIS) under the National Environmental Policy Act (NEPA) that explains EPA's proposed designation of the ELDS, identifies and evaluates possible alternative courses of action, including designation of the NBDS and/or the CSDS, or pursuing the so-called “no action” alternative(s). (EPA's April 2016 DSEIS). The DSEIS also assesses the possible environmental effects of the various alternatives.

EPA has determined that its proposed action would be either fully consistent, or consistent to the maximum extent practicable, with the enforceable policies of the State of New York's federally approved coastal management program (NY CMP). This determination is based on the analyses presented and referenced herein, including the analysis in EPA's April 2016 Proposed Rule and April 2016 DSEIS. Therefore, pursuant to Section 307(c)(1)(C) of the federal Coastal Zone Management Act (CZMA). 16 U.S.C. § 1456(c)(1)(C), EPA is providing this consistency determination to the New York Department of State (NY DOS), which administers the NY CMP.¹

Over time, the movement and accretion of silt and sand in the waters of Long Island Sound, and rivers tributary to the Sound, leads to the buildup of sediment on the bottom of these waters. This buildup can interfere with navigation and the berthing and docking of vessels. This, in turn, can threaten public safety and interfere with marine commerce and recreation. It can even impact

¹ EPA has also determined that its proposed action will be consistent to the maximum extent practicable with the enforceable policies of the federally approved coastal zone management programs of the States of Connecticut and Rhode Island. Accordingly, EPA is also providing consistency determinations to the State of Connecticut's Department of Energy and the Environment (CT DEEP) and the State of Rhode Island's Coastal Resources Management Council (RI CRMC), which administer their respective state's coastal zone management programs. *See* 15 C.F.R. § 930.36(e)(1).

national defense-related activities due to the need for adequate navigation channels and berthing areas for U.S. Navy and Coast Guard vessels that use these waters. Therefore, it is periodically necessary to dredge Long Island Sound's navigational channels, port and docking areas, marinas, tributary rivers and other areas requiring vessel access. The need for dredging is not unique to Long Island Sound; it is a necessity for waterways all over the Nation. When dredging occurs, there is, of course, a concomitant need to manage the dredged sediments appropriately.

Designating the ELDS (or another site or sites) would make a dredged material disposal site available, when needed, for the management of *suitable* dredged material from the eastern region of Long Island Sound. Dredged material is only suitable for placement at a site designated by EPA under the MPRSA if the material satisfies the rigorous sediment quality criteria of EPA's regulations under the MPRSA. *See* 40 C.F.R. Part 227. Thus, even if the proposed designation of the ELDS (or another site or sites) is finalized, any specific proposal to place dredged material at the site will still have to go through a separate, case-specific review and authorization process. *See* 33 U.S.C. § 1413; 40 C.F.R. Part 227.

The proposed ELDS is not an entirely new disposal site; rather, the site includes a *portion* of the existing New London Disposal Site (NLDS) and then extends westward to include an area adjacent to the NLDS. As proposed, the site is almost entirely in Connecticut waters, but a tiny portion of the southeastern corner of the site extends into New York waters. While the ELDS includes a part of the existing NLDS, site use restrictions are proposed for application to the ELDS that go beyond those currently applied to the NLDS. The new proposed restrictions incorporate the same standards and procedures based on the Long Island Sound Dredged Material Management Plan (LIS DMMP) that apply to the Central and Western Long Island Sound dredged material disposal sites (CLDS and WLDS, respectively). *See* 81 Fed. Reg. 24763 – 24767 (*see* proposed 40 C.F.R. §§ 228.15(b)(4)(vi) and 228.15(b)(6)(vi)); 81 Fed. Reg. 44220 – 44230 (July 7, 2016) (Final Rule for CLDS and WLDS). (July 7, 2016). These restrictions are intended to ensure protection of the waters of Long Island Sound. They are also intended to strengthen the existing process for determining whether practicable alternatives to open-water disposal are available for managing the dredged material and, thereby, to help reduce or eliminate open-water dredged material disposal in the Sound over time. EPA would expect to apply the same restrictions to any other site or sites that might be designated instead of, or in addition to, the ELDS.

Finally, as stated above, while EPA is proposing to designate the ELDS, it also assessed alternative disposal sites as discussed in both the Proposed Rule and the DSEIS. Moreover, EPA expressly sought public comment on two specific disposal site alternatives: the Niantic Bay Disposal Site (NBDS) and the Cornfield Shoals Disposal Site (CSDS). EPA explained that one or both of these sites could conceivably be designated together with, or instead of, the ELDS. *See* 81 Fed. Reg. 24748, 24749, 24751-24753, 24762; EPA's April 2016 Draft SEIS, pp. 5-99 to 5-101. EPA has also determined that designation of one or both of these alternative sites would also be consistent with the NY CMP.

II. Background

1. Law Applicable to Dredged Material Disposal Site Designations

The MPRSA is the primary federal law governing EPA Region 1's proposed designation of the ELDS. MPRSA § 102(c), 33 U.S.C. § 1412(c), authorizes EPA to designate ocean disposal sites for dredged material. Such designations are subject to, among other things, the requirements of MPRSA § 102(c) and EPA regulations promulgated at 40 C.F.R. §§ 228.4, 228.5 and 228.6.

Dredged material disposal into waters *landward* of the baseline from which the territorial sea is measured (baseline) is typically regulated under CWA § 404, 33 U.S.C. § 1344, while the MPRSA generally only applies to disposal into waters *seaward* of the baseline – i.e., “ocean waters” under the statute. *See* 33 U.S.C. § 1402(b). The waters of Long Island Sound lie *landward* of the baseline. Despite this fact, however, both legal regimes apply to dredged material disposal in the Sound. This is because MPRSA § 106(f), 33 U.S.C. § 1416(f), specifically dictates that in addition to other provisions of law, the requirements of the MPRSA apply to dredged material disposal in Long Island Sound for (a) all federal projects, and (b) non-federal projects involving more than 25,000 cubic yards of material.² Because of the terms of MPRSA § 106(f), Long Island Sound is the *only* water body lying landward of the baseline for which dredged material disposal is subject to the MPRSA's stringent requirements for sediment testing, sediment quality, disposal site designations, and site management and monitoring.

Under MPRSA §§ 103(a) – (e), 33 U.S.C. §§ 1413(a) – (e), each proposed project involving the ocean disposal of dredged material must be separately authorized by the U.S. Army Corps of Engineers (USACE), subject to EPA review and concurrence, as well as various other types of federal and state review (*e.g.*, Endangered Species Act [ESA] consultation; essential fish habitat coordination under the Magnuson-Stevens Fishery Conservation and Management Act [MSFCMA]; federal consistency review, , under the CZMA; and water quality review under Clean Water Act [CWA] § 401, 33 U.S.C. § 1341). As mentioned above, the dredged material must pass rigorous testing protocols before it can be deemed “suitable” for placement at an approved site. The sediment is subjected to a variety of testing protocols (*e.g.*, chemistry, toxicity, bioaccumulation) and must satisfy specific criteria in EPA's ocean dumping regulations at 40 C.F.R. Part 227. Suitability for open-water disposal is determined based on whether the material satisfies criteria related to its physical characteristics, toxicity, bioaccumulation potential, and water quality effects. *See, e.g.*, 40 C.F.R. §§ 227.5 and 227.6. If the material does not satisfy these regulatory criteria, then it is deemed “unsuitable” for open-water disposal and it cannot be placed into waters subject to the MPRSA.³

² Non-federal dredged material disposal projects involving 25,000 cubic yards of material or less are, instead, regulated under Section 404 of the Clean Water Act (CWA). *See* 40 C.F.R. § 230.2(b).

³ This prohibition is subject to the narrow waiver provision of MPRSA § 103(d), but to EPA Region 1's knowledge, this waiver process has never been used. Additional restrictions on any use of the waiver process have

In addition, dredged material cannot be authorized for open-water disposal under the MPRSA unless it has been determined that there is a need for such open-water disposal. This means that it must have been determined that there is no other practicable alternative for managing the dredged material that would cause less adverse environmental effects or risks. *See, e.g.*, 40 C.F.R. §§ 227.1(b), 227.2(a)(1) and 227.16. Thus, designation of a disposal site under the MPRSA only makes the site available as a possible management option for dredged material that has been determined to be suitable for open-water disposal and for which no environmentally preferable, practicable alternative means of managing the material is available.

Furthermore, MPRSA § 102(c)(3), 33 U.S.C. § 1412(c)(3), requires that EPA and the USACE develop detailed Site Management and Monitoring Plans (SMMPs) for all dredged material disposal sites designated under the statute. If monitoring or other information indicates unacceptable adverse impacts to the marine environment from use of a site, then EPA could, as appropriate, modify the conditions under which the site may be used or close the site. *See* MPRSA § 102(c)(2) and (3); 40 C.F.R. §§ 228.3(a), 228.7, 228.8, 228.11.

2. Designation of the Central and Western Long Island Sound Disposal Sites

EPA is currently proposing to designate the ELDS as an open-water disposal site for dredged material to serve the eastern region of Long Island Sound. This proposed action is closely related to EPA's prior designation of the CLDS and WLDS disposal sites to serve the central and western regions of the Sound. While this CZMA determination supports the proposed designation of the ELDS, a detailed description of the process leading to designation of the CLDS and WLDS is provided here to help place the proposed ELDS designation in the larger context of dredged material management for all of Long Island Sound. In addition, a detailed description of the site use restrictions applicable to the CLDS and WLDS sites, and the process by which they were developed, is provided here because EPA is proposing to adopt the same site use restrictions for the ELDS. Therefore, it is helpful to understand the genesis of these restrictions. Following this discussion of the designation of the CLDS and WLDS, EPA directly addresses the proposed designation of the ELDS.

In 2005, EPA designated the CLDS and WLDS under the MPRSA for potential use for the placement of suitable dredged material. *See* 70 Fed. Reg. 32498-32520 (June 3, 2005) (Final Rule) (EPA's 2005 Final Rule). In designating the CLDS and WLDS, EPA applied the MPRSA's site designation criteria. *See* 40 C.F.R. §§ 228.4, 228.5 and 228.6. EPA's designations of the CLDS and the WLDS also satisfied the requirements of other federal laws, such as the

been applied to the CLDS and the WLDS and are proposed for the ELDS. *See* 40 C.F.R. § 228.15(b)(4)(vi)(K) (disposal of dredged materials at the sites under a waiver not allowed unless 30 days prior to requesting the waiver, the New England or New York District of the USACE provides written notice to the Governors of Connecticut and New York and the North Atlantic Division of the USACE).

ESA, MSFCMA, CZMA, and CWA. (The CZMA issues will be discussed in greater detail below.)

In addition, EPA conducted its evaluation of whether or not to designate the CLDS and WLDS sites consistent with the requirements of the National Environmental Policy Act (NEPA).⁴ EPA published its Final Environmental Impact Statement in support of the site designations in March 2004 (the 2004 FEIS for CLDS and WLDS). EPA's evaluations and site designations did not address the eastern portion of Long Island Sound, noting that supplemental work would be done to consider the eastern region. *See* 70 Fed. Reg. 32509 (discussing EPA's Notice of Intent explaining its plan for addressing the different regions of the Sound).

As part of the regulatory process for the proposed CLDS and WLDS disposal site designations, EPA determined that the proposed designations would be consistent to the maximum extent practicable with the enforceable policies of New York's and Connecticut's respective coastal zone management programs (CMPs). On March 4, 2004, EPA sent NY DOS its determination with regard to the NY CMP (EPA's 2004 CZMA Consistency Determination).⁵ EPA also submitted a consistency determination to the State of Connecticut with regard to its CMP. *See* 15 C.F.R. § 930.36(e)(1).

While Connecticut concurred with EPA's determination as to its program, NY DOS sent EPA a letter on June 3, 2004, formally objecting to EPA's determination concerning the NY CMP (NY DOS's 2004 CZMA Consistency Objection). NY DOS argued both that EPA had provided insufficient information to support a consistency determination and that, based on the information provided, the site designations were inconsistent with the enforceable policies of the NY CMP. NY DOS also argued that EPA's proposed site designations would be inconsistent with certain requirements of the MPRSA.

EPA reviewed and considered NY DOS's 2004 CZMA Consistency Objection, but ultimately disagreed with its arguments and conclusions.⁶ EPA maintained that the site designations, as

⁴ EPA disposal site designation evaluations under the MPRSA are "functionally equivalent" to NEPA reviews and, as a result, are not as a matter of law subject to NEPA analysis requirements. Nevertheless, as a matter of policy, EPA voluntarily uses NEPA procedures when evaluating the potential designation of ocean dumping sites. *See* 63 Fed. Reg. 58045 (October 29, 1998) (Notice of Policy and Procedures for Voluntary Preparation of National Environmental Policy Act Documents). While EPA voluntarily uses NEPA review procedures in conducting MPRSA disposal site designation evaluations, EPA has also explained that "[t]he voluntary preparation of these documents in no way legally subjects the Agency to NEPA's requirements." 63 Fed. Reg. 58046.

⁵ In the case of Long Island Sound, the state's Long Island Sound Coastal Management Program and certain Local Waterfront Revitalization Programs were evaluated as integral parts of the state's CMP.

⁶ *See, e.g.*, Memorandum, from Mel Cote, et al., to File. "Responses to Issues Raised in New York Department of State's June 3, 2004, Letter Objecting Under the Coastal Zone Management Act to Proposed Dredged Material Disposal Site Designations by EPA Region I" (May 19, 2005) (EPA 2005 CZMA Responses); 70 Fed. Reg. 32511 ("EPA continues to hold the view that the site designations without the additional restrictions would still be

proposed, were consistent to the maximum extent practicable with the enforceable policies of the NY CMP. In an effort to avoid litigation over the disagreement, however, and in recognition of the federal and state agencies' shared commitment to protecting Long Island Sound's natural resources consistent with applicable law, the interested agencies – including EPA, USACE, the National Oceanic and Atmospheric Administration (NOAA), NY DOS, the New York Department of Environmental Conservation (NY DEC), and the Connecticut Department of Environmental Protection (CT DEP)⁷ – engaged in lengthy negotiations to determine whether there was a way to allow the dredged material disposal site designations to go forward, while also addressing NY DOS's concerns under the CZMA.

In the end, the agencies reached an agreement under which EPA completed the disposal site designations but included a number of restrictions on site use to address NY DOS's concerns. With these restrictions included, NY DOS withdrew its objection to EPA's CZMA consistency determination by letter dated May 13, 2005. Although EPA retained the view that its site designations as proposed would have satisfied the CZMA and all other applicable laws, it nevertheless agreed to include the negotiated site use restrictions so that the site designations could proceed without litigation. *See* 70 Fed. Reg. 32511.

The restrictions on the use of the CLDS and WLDS adopted as part of EPA's 2005 Final Rule are spelled out in the 40 C.F.R. §§ 228.15(b)(4) and (5). Some of these restrictions merely reiterate generally applicable requirements of the MPRSA regulations (e.g., no material may be placed at the sites unless it satisfies the sediment quality criteria of 40 C.F.R. Part 227, Subpart B). Other of the restrictions were crafted specifically for the CLDS and WLDS but are the type of restrictions typically created for any designated ocean disposal site for dredged material (e.g., providing specific coordinates to identify the boundaries of the disposal site; only allowing placement at the site of material dredged from waters in the general vicinity of the site). Still other restrictions were unique to the CLDS and WLDS. For example, long-term use of the sites was conditioned on, among other things, USACE's completion of a regional Dredged Material Management Plan for Long Island Sound (DMMP) that would assess regional dredging needs and sediment management options and would also recommend standards and procedures for achieving the goal of reducing or eliminating dredged material disposal in the Sound. In addition, the restrictions required EPA, upon completion of the DMMP, to modify the site use restrictions consistent with the procedures and standards recommended in the DMMP for reducing or eliminating open-water disposal of dredged material in the Sound. *See* 70 Fed. Reg. 32518-32519 (June 3, 2005) (40 C.F.R. §§ 228.15(b)(4)(vi)(C) and (G)). Taken together, the site use restrictions were intended both to support the goal of reducing or eliminating the placement of dredged material at sites in the waters of Long Island Sound and to ensure that when the sites are used, they are used appropriately.

consistent with the enforceable policies of New York's CMP.”). EPA incorporates the EPA 2005 CZMA Responses herein by reference and has previously provided a copy of it to NY DOS.

⁷ CT DEP has since been renamed and reconfigured as the Connecticut Department of Energy & Environmental Protection (CT DEEP).

The USACE was the lead agency responsible for developing the DMMP for Long Island Sound, but the USACE coordinated its effort with EPA, NOAA, agencies from New York and Connecticut, and other stakeholders. The USACE also prepared a Programmatic EIS (PEIS) under NEPA in support of the DMMP. Building off the information in EPA's 2004 site designation EIS, the DMMP developed detailed estimates of dredging and dredged material management needs, investigated and identified possible alternatives to open-water disposal for managing dredged material, and considered and identified procedures and standards for future dredged material disposal in order to reduce or eliminate the placement of dredged material at disposal sites in the waters of Long Island Sound.

On January 11, 2016, the USACE completed the final DMMP and supporting Final PEIS. This was the culmination of a lengthy public review and comment process in which public comments were taken on a draft of the DMMP and a Draft PEIS. EPA was a cooperating agency in the preparation of the PEIS for the DMMP. The NY DOS has already received copies of the DMMP and the associated draft and final PEISs, but these records can also be found online from the USACE's Long Island Sound DMMP website at: <http://www.nae.usace.army.mil/Missions/ProjectsTopics/LongIslandSoundDMMP.aspx>. The DMMP and the PEIS are a part of the information supporting this consistency determination.

Within 60 days of the DMMP's completion, EPA was required to propose amendments to the CLDS and WLDS site designation regulations to incorporate procedures and standards consistent with those recommended in the DMMP. *See* 40 C.F.R. §§ 228.15(b)(vi)(C) and (G). Therefore, on February 10, 2016, EPA issued a proposed rule and accompanying Federal Register notice in order to make the proposed amendments available for public review and comment. 81 Fed. Reg. 7055 – 7063 (February 10, 2016) (EPA's February 2016 Proposed Rule). This Federal Register notice is also part of the information supporting this consistency determination and is available on EPA's website at <http://www.nae.usace.army.mil/Missions/Projects-Topics/Long-Island-Sound-DMMP/>. Also on February 10, 2016, EPA Region 1 submitted to NY DOS its determination that its proposed action would be consistent to the maximum extent practicable with the enforceable policies of the NY CMP.

As per the requirements of EPA's 2005 Final Rule, EPA's February 2016 Proposed Rule included procedures and standards for use of the sites and/or practicable alternatives to the sites. In some cases, requirements from the existing regulations were retained, while in other cases new requirements were proposed. In all cases, the amendments were designed to be consistent with the recommendations of the DMMP and the requirements of applicable law, though in some respects they may be viewed to go beyond the recommendations of the DMMP. Collectively, the proposed amendments to the regulations were developed to serve the goal of reducing or eliminating the open-water disposal of dredged material in the waters of Long Island Sound.

In response to the DMMP, on March 4, 2016, NY DOS submitted a "petition" to EPA pursuant to 40 C.F.R. §§ 228.15(b)(4)(vi)(C) and (G) arguing that the procedures and standards recommended in the DMMP were insufficient and calling on EPA to adopt different or

additional ones in its final regulatory amendments. NY DOS's petition (at pp. 5-6) acknowledged that EPA had already proposed regulatory amendments for public review and comment but did not comment on EPA's February 2016 Proposed Rule directly. The state also reserved the right to petition EPA again if it deemed EPA's proposed regulatory amendments inadequate.

On March 25, 2016, NY DOS submitted its comments on the February 2016 Proposed Rule to EPA. (Including NY DOS's comments), EPA received a total of 119 individual sets of comments on the Proposed Rule from federal and state agencies, municipalities, elected officials, and members of the public. The comments represented a wide range of views, some supporting the proposed amendments, others requesting revisions to them, and still others calling for a prohibition on all open-water placement of dredged material in Long Island Sound.) NY DOS's comments called for revisions to the proposed amendments that would, among other things, "establish additional procedures and standards that will result in clear, staged reductions in open water disposal of dredge material over time." EPA discussed the issues with NY DOS, as well as with USACE, CT DEEP, NY DEC and others, in an effort to determine whether the regulatory amendments could be adjusted in light of the comments received to produce final amendments that all parties would find acceptable.

Following these discussions, on April 25, 2016, NY DOS issued EPA a "Conditioned Concurrence" letter under the CZMA (NY DOS Conditioned Concurrence). As the NY DOS Conditioned Concurrence explained, NY DOS did not concur with EPA's determination that its proposed regulatory amendments were, as is, consistent to the maximum extent practicable with New York's CMP. NY DOS did, however, propose (at pp. 6-7) conditions that "... if accepted and included in the EPA amended rule for the CLDS and WLDS site designations, would provide for this conditional concurrence to be considered as a concurrence." NY DOS further stated that "[i]f the conditions are not accepted and fully implemented, this conditional concurrence shall be treated as an objection." *Id.*

EPA made adjustments to the regulatory amendments consistent with the conditions specified in the NY DOS Conditioned Concurrence, and based on EPA's consideration of public comments submitted on the February 2016 Proposed Rule. As a result, EPA considers the Conditioned Concurrence to be a Concurrence. EPA issued its Final Rule on July 7, 2016 (EPA's July 7, 2016 Final Rule). 81 Fed. Reg. 44220 – 44230 (July 7, 2016) (Final Rule).

EPA's final site designation regulations for the CLDS and WLDS, as amended, and as published in EPA's July 2016 Final Rule, are summarized below:

1. Regulations are retained specifying the location, size and depth of the CLDS and WLDS disposal sites (*see* 81 Fed. Reg. 44229 (new 40 C.F.R. §§ 228.15(b)(4)(i) – (iii) and 228.15(b)(5)(i) – (iii)));
2. Regulations are retained specifying that the designated sites are only for placement of dredged material (*see* 40 C.F.R. §§ 228.15(b)(4)(iv) and 228.15(b)(5)(iv)).

3. Regulations are retained specifying that, consistent with MPRSA § 106(f), the designations and restrictions for these sites apply only for material from federal projects, including USACE projects, and private projects involving more than 25,000 cubic yards of material (*see* 81 Fed. Reg. 44229 (new 40 C.F.R. §§ 228.15(b)(4)(vi) and 228.15(b)(5)(vi))).
4. Regulations are retained that limit disposal at these sites to dredged material from Long Island Sound and its vicinity (*see* 40 C.F.R. §§ 228.15(b)(4)(vi)(A) and 228.15(b)(5)(vi)).
5. Regulations are retained specifying that “the goal of these conditions is to reduce or eliminate open-water disposal of dredged material in Long Island Sound” (*see* 81 Fed. Reg. 44229 (new 40 C.F.R. §§ 228.15(b)(4)(vi) and 228.15(b)(5)(vi))).
6. Regulations are retained specifying that disposal must comply with the terms of the most recent approved SMMP for each site (*see* 40 C.F.R. §§ 228.15(b)(4)(vi)(B) and 228.15(b)(5)(vi)).
7. Regulations are retained specifying that disposal is limited to dredged material that complies with the Ocean Dumping Regulations (*e.g.*, sediment quality criteria) (*see* 81 Fed. Reg. 44229 (redesignating 40 C.F.R. § 228.15(b)(4)(vi)(J) as 228.15(b)(4)(vi)(H) and new 40 C.F.R. §§ 228.15(b)(4)(vi)(C)(3)(i) and 228.15(b)(5)(vi))).
8. Regulations are retained that prohibit disposal during specified weather conditions that would create a heightened risk of spillage of dredged material during transit (*see* 81 Fed. Reg. 44229 (redesignating 40 C.F.R. §§ 228.15(b)(4)(vi)(L) as 40 C.F.R. § 228.15(b)(4)(vi)(J))).
9. Regulations are retained that prohibit disposal under a waiver of requirements by EPA under 33 U.S.C. § 1413(d) unless, among other things, the USACE first gives 30 days advanced notice to the Governors of Connecticut and New York that it will be seeking a waiver (*see* 81 Fed. Reg. 44229 (redesignating 40 C.F.R. §§ 228.15(b)(4)(vi)(K) as 40 C.F.R. § 228.15(b)(4)(vi)(I) and 228.15(b)(5)(vi))).
10. Regulations are retained providing that nothing in the regulations precludes EPA from designating other dredged material disposal sites, or amending the CLDS and/or WLDS designations, as long as any such action is carried out through a separate rulemaking in accordance with applicable law. In addition, nothing in the site designations is to be interpreted to restrict EPA’s authorities under the MPRSA or the implementing regulations, or to restrict EPA’s authority to amend the regulations. (*See* 81 Fed. Reg. 44229 (redesignating 40 C.F.R. § 228.15(b)(4)(vi)(N) as 40 C.F.R. § 228.15(b)(4)(vi)(K))).
11. New restrictions are imposed that build on the Regional Dredging Team (RDT) process specified in 40 C.F.R. §§ 228.15(b)(4)(vi)(I), footnote 3 and 228.15(b)(5)(vi) of the 2005 Final Rule, and which allow placement of dredged material at the designated sites only if, after full consideration of recommendations provided by the RDT, the USACE finds (and the EPA does not

object to such finding), based on a fully documented analysis (*see* 81 Fed. Reg. 44229 (40 C.F.R. §§ 228.15(b)(4)(vi)(C) and 228.15(b)(4)(vi)), that for a given dredging project:

- a. There are no practicable alternatives (as defined in 40 CFR 227.16(b)) to open-water disposal in Long Island Sound, and that any available practicable alternative to open water disposal will be fully utilized for the maximum volume of dredged material practicable (*see* 81 Fed. Reg. 44229 (40 C.F.R. §§ 228.15(b)(4)(vi)(C)(1) and 228.15(b)(4)(vi));
- b. Determinations relating to paragraph (b)(4)(vi)(C)(1) of this section will recognize that any alternative to open-water disposal may add additional costs (*see* 81 Fed. Reg. 44229 (40 C.F.R. §§ 228.15(b)(4)(vi)(C)(2) and 228.15(b)(4)(vi));
- c. Disposal of dredged material at the designated sites pursuant to this paragraph (b)(4) shall not be allowed to the extent that a practicable alternative is available (*see* 81 Fed. Reg. 44229 (40 C.F.R. §§ 228.15(b)(4)(vi)(C)(2) and 228.15(b)(4)(vi)); and
- d. The following standards for different dredged material types have been appropriately considered (*see* 81 Fed. Reg. 44229 (40 C.F.R. §§ 228.15(b)(4)(vi)(C)(3)(i) – (iii) and 228.15(b)(4)(vi)):

- (1) *Unsuitable Materials.* As already mentioned above, open-water disposal shall be limited to dredged sediments that comply with the Ocean Dumping Regulations;
- (2) *Suitable sandy material.* Suitable coarse-grained material, which generally may include up to 20 percent fines when used for direct beach placement, or up to 40 percent fines when used for nearshore bar/berm nourishment, should be used for beach or nearshore bar/berm nourishment or other beneficial use whenever practicable. If no other alternative is determined to be practicable, suitable coarse-grained material may be placed at the designated sites.
- (3) *Suitable fine-grained material.* This material typically has greater than 20 to 40 percent fine content and, therefore, is not typically considered appropriate for beach or nearshore placement, but has been determined to be suitable for open-water placement by testing and analysis. Materials dredged from upper river channels in the Connecticut, Housatonic and Thames Rivers should, whenever possible, be disposed of at existing Confined Open Water sites, on-shore, or through in-river placement. Other beneficial uses such as marsh creation, should be examined and used whenever practicable. If no other alternative is determined to be practicable, suitable fine-grained material may be placed at the designated sites.

12. New restrictions are imposed that call for contaminant source reduction efforts to control sediment entering waterways so as to reduce the need for maintenance dredging of harbor features and facilities by reducing shoaling rates. The regulations indicate that federal, state and local agencies tasked with regulating discharges into the watershed should continue to exercise their authorities under various statutes and regulations in a continuing effort to reduce the flow of sediments into state waterways and harbors. (*See* 81 Fed. Reg. 44229 (40 C.F.R. §§ 228.15(b)(4)(vi)(D) and 228.15(b)(5)(vi))).
13. New restrictions are imposed that again build on the RDT process created by 40 C.F.R. §§ 228.15(b)(4)(vi)(I), footnote 3 and 228.15(b)(5)(vi) of the 2005 Final Rule. The new restrictions both continue the RDT *and* create a “Steering Committee” to work in concert with the RDT. As stated in the new regulations, the Steering Committee will:

... consist[] of high-level representatives from the states of Connecticut and New York, EPA, USACE, and, as appropriate, other federal and state agencies. The Steering Committee will provide policy-level direction to the Long Island Sound Regional Dredging Team (LIS RDT) and facilitate high-level collaboration among the agencies critical to promoting the development and use of beneficial alternatives for dredged material. State participation on the LIS RDT and Steering Committee is voluntary. The Steering Committee is charged with: establishing a baseline for the volume and percentage of dredged material being beneficially used and placed at the open-water sites; establishing a reasonable and practicable series of stepped objectives, including timeframes, to increase the percentage of beneficially used material while reducing the percentage and amount being disposed in open water, and while recognizing that the amounts of dredged material generated by the dredging program will naturally fluctuate from year to year; and developing accurate methods to track the placement of dredged material, with due consideration for annual fluctuations. The stepped objectives should incorporate an adaptive management approach while aiming for continuous improvement. When tracking progress the Steering Committee should recognize that exceptional

circumstances may result in delays in meeting an objective. Exceptional circumstances should be infrequent, irregular, and unpredictable. It is expected that each of the member agencies will commit the necessary resources to support the LIS RDT and Steering Committee's work, including the collection of data necessary to support establishing the baseline and tracking and reporting on the future disposition of dredged material. The Steering Committee may utilize the LIS RDT, as appropriate, to carry out the tasks assigned to it. The Steering Committee, with the support of the LIS RDT, will guide a concerted effort to encourage greater use of beneficial use alternatives, including piloting alternatives, identifying possible resources, and eliminating regulatory barriers, as appropriate.

81 Fed. Reg. 44229 – 44230 (40 C.F.R. § 228.15(b)(4)(vi)(E)).

14. New restrictions are imposed regarding the RDT (*see* 81 Fed. Reg. 44230. (40 C.F.R. §§ 228.15(b)(4)(vi)(F)(1) - (4) and 228.15(b)(5)(vi))) which specify, among other things, that:
- a. The goal of the Long Island Sound Regional Dredging Team (LIS RDT), working in cooperation with, and support of, the Steering Committee, is to reduce or eliminate wherever practicable the open-water disposal of dredged material.
 - b. The RDT will review dredging projects and make recommendations as described in paragraph (vi)(C) above. The RDT will report to the USACE on its review of dredging projects within 30 days of receipt of project information. Project proponents should consult with the RDT early in the development of those projects, to ensure that alternatives to open-water placement are fully considered.
 - c. The RDT will also assist the Steering Committee in: establishing a baseline for the volume and percentage of dredged material being beneficially used and placed at the open water sites; establishing a reasonable and practicable series of stepped objectives, including timeframes, to increase the percentage of beneficially used material while reducing the percentage and amount being disposed in open water, recognizing that the volume of dredged material generated by the dredging program will naturally fluctuate from year to year; and developing accurate methods to track and report on the placement of dredged material, with due consideration for annual fluctuations.
 - d. The RDT will, in coordination with the Steering Committee, serve as a forum for: continuing exploration of new beneficial use alternatives to

- open-water disposal; matching the availability of beneficial use alternatives with dredging projects; exploring cost-sharing opportunities; and promoting opportunities for beneficial use of clean, parent marine sediments often generated in the development of CAD cells.
- e. The RDT will assist USACE and EPA in continuing long-term efforts to monitor dredging impacts in Long Island Sound, including supporting USACE's DAMOS (Disposal Area Monitoring System) program and related efforts to study the long-term impacts of open-water placement of dredged material.
 - f. The geographic scope of the RDT includes all of Long Island Sound and adjacent waters landward of the seaward boundary of the territorial sea (three-mile limit) or, in other words, from Throgs Neck to a line three miles seaward of the baseline across western Block Island Sound.
 - g. The RDT shall be comprised of representatives from the states of Connecticut and New York, EPA, USACE, and, as appropriate, other federal and state agencies, as appropriate. As previously noted, state participation on the RDT is voluntary.
 - h. Specific details regarding the RDT's structure (e.g., chair, committees, working groups) and process shall be determined by the RDT and may be revised as necessary to best accomplish the team's purpose.

New restrictions are imposed stating that if the volume of open-water disposal of dredged material, as measured in 2026, has not declined or been maintained over the prior ten years, then any party may petition EPA to do a rulemaking to amend the restrictions on the use of the sites. (*See* 81 Fed. Reg. 44230 (40 C.F.R. § 228.15(b)(4)(vi)(G) and 40 C.F.R. § 228.15(b)(5)(vi))).

While the DMMP and associated PEIS identified potential alternatives to open-water disposal for some amount of dredged material from the waters of Long Island Sound, these reports also make clear that the alternatives to open-water disposal (e.g., beneficial use alternatives, upland and confined in-water disposal) do not provide sufficient capacity to handle the full amount of material expected to be dredged from the central, western and eastern regions of Long Island Sound, either individually or collectively. In light of this, and other factors, EPA decided not to forego designating the CLDS and WLDS (or proposing to designate the ELDS).

The information indicates that there will be a need to use all three sites to receive some amount of suitable dredged material from areas in and around Long Island Sound that require dredging to maintain navigational safety for military activities and marine commercial and recreational opportunities. Ultimately, decisions about whether particular dredged material can and should be disposed of at the CLDS or WLDS (or ELDS), or whether there is a practicable alternative for handling it in another way (e.g., upland disposal or beneficial reuse, such as beach nourishment), will need to be made on a fact-specific, case-by-case basis taking into account both the specific dredged material and the range of available management options.

That said, the procedures and standards in the regulatory amendments are well designed to minimize the amount of material to be disposed of at the CLDS and WLDS. Building on the requirements of the MPRSA and the legal restrictions in the regulations (*e.g.*, prohibiting the disposal of material that does not satisfy the MPRSA sediment quality criteria or for which a practicable alternative to open-water disposal is available), and consistent with the standards and procedures recommended in the DMMP, the regulatory amendments will help to promote the identification and use of alternative methods of managing dredged material. Moreover, the new and enhanced procedures will bolster the regulatory footing for a collaborative state and federal inter-agency process geared to minimizing open-water disposal of dredged material.

III. Proposed Designation of the Eastern Long Island Sound Disposal Site (ELDS)

As stated above, Region 1 is now proposing to designate the ELDS to provide a dredged material disposal site in the eastern region of Long Island Sound under Sections 102(c) and 106(f) of the MPRSA. 33 U.S.C. §§ 1412(c) and 1416(f). *See also* 40 C.F.R. § 228.4(e). EPA's April 2016 Proposed Rule informed the public of the proposed action and invited public review and comment on it. 81 Fed. Reg. 24748-24767 (April 27, 2016). EPA simultaneously published, and sought public review and comment on, a DSEIS under the National Environmental Policy Act that explains EPA's proposed action, assesses the possible environmental effects of the proposed action, and assesses possible alternative courses of action, including the so-called "no action" alternative or designation of other alternative sites. EPA's April 2016 DSEIS. NY DOS has received copies of both EPA's April 2016 Proposed Rule and EPA's April 2016 DSEIS.

The newly constituted ELDS is in the eastern portion of the eastern region of Long Island Sound. The site lies south of the mouth of the Thames River, approximately halfway between Connecticut and New York. *See* 81 Fed. Reg. 24751-24752 (citing EPA's April 2016 DSEIS, Figure 3-9). The closest upland points to the ELDS are Goshen Point, Connecticut, approximately 1.2 nautical miles (nmi) (2.2 km) to the north, and Fishers Island, New York, approximately 1.4 nmi (2.6 km) to the southeast. *Id.* The dimensions of the ELDS, as proposed, would be 1 × 2 nmi, for a total area of 2 nmi². As proposed, the site is almost entirely in Connecticut waters, but a tiny portion of the southeastern corner of the site extends into New York waters. For the final site designation, EPA is planning to redraw the boundary so that the site is entirely within Connecticut waters, with the southeastern corner lying near, but on the other side of, the boundary with New York waters.

As also explained above, EPA is not proposing an entirely new disposal site; rather, the proposed ELDS includes only a *portion* of the existing New London Disposal Site (NLDS). Specifically, the ELDS includes approximately the western of the NLDS, as well as an adjacent area immediately to the west beyond the NLDS boundary. The ELDS does not include the eastern half of the current NLDS. *See* EPA's April 2016 DSEIS, Fig. 5-6.

The current authorization for the NLDS expires on December 23, 2016. Therefore, unless the ELDS, or some other site in the eastern region of the Sound, is designated, as of December 23, 2016, no open-water disposal site will be available in the eastern region of the Sound, even for

suitable dredged material for which there is no practicable alternative method of management available. As explained in EPA's April 2016 Proposed Rule:

[t]he NLDS ... [is an] active open-water dredged material disposal site [and] was previously selected by the USACE using their site selection authority under MPRSA 103(b), 33 U.S.C. 1413(b). The statute limits the use of USACE-selected sites to two five-year periods, 33 U.S.C. 1413(b), but Congress extended the period of use of the NLDS by five additional years by Public Law on December 23, 2011 (Pub. L. 112-74, Title I, Sec 116).

81 Fed. Reg. 24752. Moreover, as indicated in EPA's April 2016 Proposed Rule:

EPA determined, based on the evaluation of projected dredging needs over a 30-year planning horizon and alternatives to open-water disposal conducted for the USACE's DMMP, that there are dredging and dredged material disposal/handling needs that exceed the available disposal/handling capacity in the eastern region of Long Island Sound . . .

81 Fed. Reg. 24749. More specifically, with regard the estimated dredging needs:

...dredging in eastern Long Island Sound is projected to generate approximately 22.6 million cubic yards (mcy) of dredged material over the next 30 years, including 17.9 mcy from Connecticut ports and harbors and 4.7 mcy from ports and harbors in New York. Of the total amount of 22.6 mcy, approximately 13.5 mcy are projected to be fine-grained sediment that meets MPRSA and CWA standards for aquatic disposal (i.e., "suitable" material), and 9.1 mcy are projected to be coarse-grained sand that also meets MPRSA and CWA standards for aquatic disposal (i.e., also "suitable" material).

81 Fed. Reg. 24750. And, with respect to the capacity of other alternatives:

The combined capacity of the CLDS and WLDS is approximately 40 mcy, which is enough to handle the 27 mcy from [the central and western regions of Long Island Sound]. Those sites, however, neither have the capacity nor were intended also to meet the dredging needs of the eastern Long Island Sound region, which, as stated above, has been estimated to be approximately 22.6 mcy of suitable material (which, when added to the 27 mcy of suitable material from the central and western regions, amounts to a total of 49.6 mcy of suitable material from all of Long Island Sound). Furthermore, the distances from mouth of the Connecticut River to the CLDS and WLDS are 29.9 nmi and 58.4 nmi, respectively. Thus, both sites are outside the ZSF for the eastern Long Island Sound Region and for the reasons discussed above, neither would be a viable long-term solution for dredged material from the eastern Long Island Sound region, even if the CLDS could conceivably be used for material from the eastern Sound in an emergency situation.

81 Fed. Reg. 24750. And:

The DMMP also included a detailed assessment of alternatives to open-water disposal and determined that, while all the sand generated in this region should be able to be used beneficially to nourish beaches, there are not practicable alternatives to open-water disposal with sufficient capacity to handle the projected volume of fine-grained sediment.

81 Fed. Reg. 24750. In other words, based on the information in the DMMP and EPA's April 2016 DSEIS, the potential alternatives to open-water disposal that have been identified to date do not have sufficient capacity to handle the volume of dredged material predicted to be generated from the eastern region of Long Island Sound. *See* EPA's April 2016 DSEIS, pp. 2-4 to 2-8; pp. 3-6 to 3-15, 3-20, 3-35, 5-24. *See also* EPA's April 2016 Proposed Rule, 81 Fed. Reg. 24750.

Thus, not having an appropriate open-water disposal site in the eastern part of the Sound would be problematic for five primary reasons:

- necessary dredging could be blocked or delayed, potentially threatening the safety of, and otherwise hampering, recreational, commercial, and military navigation;
- the USACE might be forced to use its site selection authority to specify a new sites for shorter-term use, which could over time lead to a proliferation of disposal areas in the eastern part of Long Island Sound, which would be contrary to Congress's preference for concentrating any placement of dredged material at EPA-designated sites, as indicated by MPRSA § 103(b), 33 U.S.C. § 1413(b) (the USACE "shall, to the maximum extent feasible, utilize the recommended sites designated by the Administrator..." for dredged material disposal);
- Site Management and Monitoring Plans (SMMPs) enhance the management of disposal sites and are developed under the requirements of MPRSA § 102(c)(3), 33 U.S.C. § 1412(c)(3), for EPA-designated sites but not for USACE -selected sites;
- relying on short-term site selections would maximize the resource demands on regulatory agencies and the public because it would necessitate undertaking site selection procedures and associated NEPA reviews every time another site selection was needed; and
- dredged material might need to be hauled longer distances for placement at open-water sites outside the eastern region of the Sound, which would be more costly, use more energy, generate greater air emissions from dredged material transportation, and generally increase the risk of vessel accidents due to the greater distances being travelled. *See* 81 Fed. Reg. 24749 (detailing distances from Saybrook Outer Bars at the mouth of the Connecticut River to the nearest designated dredged material disposal sites in other parts of Long Island Sound); EPA's April 2016 DSEIS, p. 5-18.

Designation of the ELDS (or an alternative site) by EPA would provide an open-water disposal option in the eastern portion of Long Island Sound to address these concerns. Designation of a dredged material disposal site by EPA does not, however, by itself authorize disposal of any

particular dredged material at the site. Designation of the ELDS would only make that site available to receive dredged material *if* no environmentally preferable, practicable alternative for managing that dredged material is available, and *if* the sediments are analyzed and found suitable for open-water disposal. *See* 40 CFR 227.1(b), 227.2 and 227.3; 40 CFR part 227, subparts B and C.

As discussed in both EPA's April 2016 DSEIS and EPA's April 2016 Proposed Rule, Region 1 considered a variety of alternatives before deciding to propose designation of the ELDS. First, EPA considered a number of variations on the "No Action Alternative." These alternatives involved various scenarios that might unfold if no site is designated in the eastern region of Long Island Sound. For example, EPA considered a scenario under which no site is authorized in the eastern portion of the Sound and beneficial use and upland disposal options have to be relied upon exclusively. As previously discussed, because these options do not provide sufficient capacity, some amount of needed dredging would have to be cancelled or delayed under this scenario. Alternatively, in the absence of an EPA site designation, sites could potentially be authorized under the USACE's site selection authority, but this would lead to the problems mentioned above, including the potential proliferation of disposal sites. EPA also considered relying on existing designated sites outside of the eastern region of the Sound, but this would contribute to prematurely using up capacity at those sites and would increase costs, vessel air emissions and the risk of vessel accidents.

Finally, EPA also evaluated the possibility of designating open-water sites in the eastern region of the Sound other than, or in addition to, the ELDS. For example, EPA evaluated the NBDS and the CSDS. After evaluating all these options, EPA decided that designating the ELDS was its preferred option, *see* EPA's April 2016 DSES, Chapters 3 – 5, but also affirmatively sought public comment on the options of designating the NBDS instead of the ELDS, or designating the CSDS and/or NBDS as a complement to the ELDS.

EPA's proposed rule to designate the ELDS (or other site alternatives) includes the same site use restrictions that were originally proposed for the CLDS and WLDS dredged material disposal sites. In response to agency and public comment on the proposed restrictions for the CLDS and WLDS, EPA later modified and enhanced those restrictions in the final rule for those sites. 81 Fed. Reg. 44220-44230. As EPA indicated in the April 2016 Proposed Rule for the ELDS, EPA intends the final rule for the ELDS to apply the final CLDS/WLDS restrictions to the ELDS (or any other site designated to serve the eastern region of Long Island Sound). *See* 81 Fed. Reg. 24763-24764. These restrictions incorporate standards and procedures based on the Long Island Sound Dredged Material Management Plan (LIS DMMP) and are intended to strengthen the existing process for identifying and promoting the development of potential practicable alternatives to open-water disposal for managing dredged material. As a result, these standards and procedures are intended to reduce or eliminate open-water dredged material disposal in the Sound over time. These standards and procedures are detailed farther above in the discussion about the designation of CLDS and WLDS. *See* 81 Fed. Reg. 44220-44230; 40 C.F.R. §§ 228.15(b)(4) and (5).

IV. Applicability of the CZMA to Designation of the ELDS (and/or Other Sites in Eastern Long Island Sound)

1. Generally

Section 307(c)(1)(A) of the CZMA provides that:

[e]ach Federal agency activity within or outside the coastal zone that affects any land or water use or natural resource of the coastal zone shall be carried out in a manner which is consistent to the maximum extent practicable with the enforceable policies of approved State management programs.

16 U.S.C. § 1456(c)(1)(A). In addition, CZMA § 307(c)(1)(C) provides that:

[e]ach Federal agency carrying out an activity subject to paragraph (1) shall provide a consistency determination to the relevant State agency designated under section 1455(d)(6) of this title at the earliest practicable time, but in no case later than 90 days before final approval of the Federal activity unless both the Federal agency and the State agency agree to a different schedule.

16 U.S.C. § 1456(c)(1)(C). Thus, CZMA § 307(c) dictates that when a federal agency activity will affect any land or water use or natural resource of a state's coastal zone, whether the activity is conducted within or outside that coastal zone, the federal agency must send the relevant state(s) a determination that the activity will be carried out "in a manner which is consistent to the maximum extent practicable with the enforceable policies of [relevant] approved State [coastal zone] management programs." *Id.*

NOAA regulations under the CZMA state that:

[t]he term "effect on any coastal use or resource" means any reasonably foreseeable effect on any coastal use or resource resulting from a Federal agency activity or federal license or permit activity Effects are not just environmental effects, but include effects on coastal uses. Effects include both direct effects which result from the activity and occur at the same time and place as the activity, and indirect (cumulative and secondary) effects which result from the activity and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects are effects resulting from the incremental impact of the federal action when added to other past, present, and reasonably foreseeable actions, regardless of what person(s) undertake(s) such actions.

15 C.F.R. § 930.11(g). In addition, the NOAA regulations explain that:

[t]he term "enforceable policy" means State policies which are legally binding through constitutional provisions, laws, regulations, land use plans, ordinances, or

judicial or administrative decisions, by which a State exerts control over private and public land and water uses and natural resources in the coastal zone,” 16 U.S.C. § 1453(6a), and which are incorporated in a management program as approved by OCRM either as part of program approval or as a program change under 15 CFR part 923, subpart H. An enforceable policy shall contain standards of sufficient specificity to guide public and private uses. Enforceable policies need not establish detailed criteria such that a proponent of an activity could determine the consistency of an activity without interaction with the State agency. State agencies may identify management measures which are based on enforceable policies, and, if implemented, would allow the activity to be conducted consistent with the enforceable policies of the program. A State agency, however, must base its objection on enforceable policies.

15 C.F.R. § 930.11(h). Finally, NOAA’s regulations also indicate that the federal agency “should give consideration to management program provisions which are in the nature of recommendations” (as opposed to enforceable policies).

EPA dredged material disposal site designations under MPRSA § 102 are federal agency activities, *see* 15 C.F.R. § 930.31(a), which could potentially affect the natural resources and/or land or water uses of a state’s coastal zone under the terms of CZMA § 307(c)(1)(A) and (C), 16 U.S.C. § 1456(c)(1)(A) and (C). *See also* 15 C.F.R. § 930.11(g). As discussed further below and in EPA’s April 2016 Draft SEIS and April 2016 Proposed Rule, EPA evaluated the potential for effects on water quality, benthic habitat, and aquatic organisms from placing dredged material at the open-water disposal site alternatives under consideration, both during a disposal event and thereafter. In addition, EPA evaluated the effects that placing material at the sites could have on uses of coastal zone resources (e.g., possible interference with navigation). EPA considered not only the alternative disposal sites, but also, in a general sense, sites where dredging might occur and transit routes from those sites to the disposal sites.

2. Direct and Indirect Effects of Disposal Site Designation

a. No Direct Effects

Designating the ELDS (or the NBDS or CSDS) would have no *direct* effects on any resource or use of the coastal zones of New York, Connecticut, or Rhode Island. This is because EPA designation of a dredged material disposal site does not actually authorize the placement of dredged material at the site. *See* 15 C.F.R. § 930.11(g) (“direct effects ... result from the activity and occur at the same time and place as the activity ...”). Designation only makes the site *potentially* available to receive dredged material. No material may be placed at the site unless such placement is first specifically authorized by the USACE. Such authorization, in turn, cannot be granted until the material has been assessed and found to satisfy the strict sediment quality criteria of the MPRSA regulations and it has been determined that no practicable alternative to open water disposal is available that would have less adverse environmental effects. *See* 40 C.F.R. §§ 227.1(b), 227.5, 227.6, 227.16(b).

b. Possible Indirect Effects

Indirect Effects at the Disposal Site(s)

Designating the ELDS (or NBDS or CSDS) could potentially have *indirect* effects on the coastal zones of New York, Connecticut and/or Rhode Island. As explained above, “indirect (cumulative and secondary) effects ... [are effects that] result from the activity and are later in time or farther removed in distance, but are still reasonably foreseeable.” 15 C.F.R. § 930.11(g). Designation of the ELDS or another alternative could result in indirect effects *at the disposal site* because it is “reasonably foreseeable” that once a site has been designated, later federal actions will approve placement at the site of at least some sediment dredged from the waters of both states.⁸ Placing material at the site will have some type of environmental effect as material travels through the water column and lands on the seafloor. (These environmental effects are discussed in more detail farther below.)

This is not to say that there would be no effects on the waters of Long Island Sound related to dredged material management without designation of the ELDS (or CSDS or NBDS). Even in the absence of a site designation, the need for dredging and dredged material management remains and could necessitate the USACE’s selection of other sites, such as the NBDS, in the eastern region of the Sound. *See* 33 U.S.C. § 1413(b); 40 C.F.R. § 228.15(b)(4)(vi)(N). This could lead to indirect effects at a proliferation of disposal sites used for a shorter period of time, which would be contrary to “EPA’s policy view that it is generally environmentally preferable to concentrate any open-water disposal at sites that have been used historically and at fewer sites, *see* 40 CFR 228.5(e)” 81 Fed. Reg. 24753 (April 27, 2016). Alternatively, if no alternative site is selected or designated in the eastern region of the Sound, then either necessary dredging will not occur or dredged material would have to be hauled to more distant dredged material disposal sites.⁹ In the former case, navigational safety and marine commerce and recreation would suffer. In the latter case, greater haul distances would have greater adverse environmental and economic effects, such as increased fuel use, increased air emissions, greater risk of accidents, and greater project costs.

Ultimately, EPA does not believe that designating the ELDS (or NBDS or CSDS) would have

⁸ Such future disposal is reasonably foreseeable in light of the DMMP’s projections that alternatives to open-water disposal cannot accommodate all the dredged material that will need to be managed over the next 30 years.

⁹ EPA does not assume that all needed dredging will be able to go forward without an available open-water disposal site. Rather, EPA concludes that without an open-water disposal site in the eastern region of Long Island Sound, some needed dredging will *not* be able to proceed. This is because both the DMMP and EPA’s analysis for this rulemaking conclude based on current information that other methods of dredged material management (*e.g.*, beneficial use, upland disposal, or confined in-water disposal facilities) have insufficient capacity to handle the material from all needed dredging projects over the next 20-30 years. *See* 81 Fed. Reg. 24750. At the same time, EPA recognizes that even without an open-water site, some dredging would proceed because the dredged material would be able to be managed using practicable alternatives to open-water placement (*e.g.*, using dredged sand for beach nourishment).

significant indirect effects at the disposal site(s). While there is no way to know in advance the amount or precise characteristics of any dredged material that would be placed at a designated site, material will only be authorized for placement at a designated site if there are no practicable alternative management methods available that will have less adverse environmental effects. In addition, the material would have to be tested and found to satisfy the MPRSA's strict sediment quality criteria in 40 C.F.R. Part 227, Subpart B, before it could be authorized for placement at the site. These criteria prohibit the placement of toxic or bioaccumulative material at a designated site. *See* 40 C.F.R. §§ 227.3, 227.5 and 227.6. Any dredged material placed at a designated site will travel rapidly to the seafloor and will not disperse horizontally through the water and away from the site. *See* 81 Fed. Reg. 24754, 24758. Placing dredged material at one of the disposal sites would not adversely affect water quality beyond temporarily raising water column turbidity in the areas of the disposal site during initial mixing.

The dredged material placed at a designated site also will have only minor effects on the benthic habitat within the disposal sites. This is because, as stated above, the material will have had to satisfy EPA's sediment quality criteria from 40 C.F.R. Part 227, Subpart B. Moreover, although placing the material at a site would somewhat alter the seafloor and would smother some benthic organisms, extensive research shows that areas receiving dredged material are quickly recolonized by resident benthic organisms. As discussed in the USACE's PEIS in support of the DMMP, which cites Germano et al, 2011, "although short-term impacts and long-term changes in habitat due to sediment type and elevation of the seafloor have occurred [at the disposal sites], there is no evidence of long-term effects on benthic processes or habitat conditions." In addition, environmental effects would not be significant because the disposal sites do not encompass natural resource areas of particular heightened sensitivity. *See* 81 Fed. Reg. 24754 – 24755. Placement of dredged material at the sites also would not have significant adverse effects on aquatic organisms transiting the sites because of the restrictions on the type of material that could be placed there. Any effects of dredged material disposal would be further limited by the fact that placement of material at the sites could only occur during the limited months when dredging is allowed (typically only from October to April). *See* 81 Fed. Reg. 24754, 24756 (discussing "environmental windows" or "time-of-year restrictions" for dredging).

EPA has indicated that the ELDS is a containment site, meaning that material placed there will tend to remain there. Part of the NBDS site is also a containment area. Containment sites keep any impacts of disposal focused in one area and are optimal for site management and monitoring by EPA and the USACE. The CSDS and a part of the NBDS site are dispersive sites. Bottom currents tend to move material placed in these dispersive areas away from the sites to the west. This is the primary reason that EPA is not recommending designation of the CSDS or NBDS at this time. As EPA has explained, given the dispersive character of the CSDS, the USACE, EPA and the states have in the past limited material placed at the CSDS to certain types of material for which dispersion would not be a problem (e.g., clean sand). If the CSDS and/or the dispersive area of the NBDS were designated, EPA would expect to place similar restrictions on their use. As a result of these restrictions, and the fact that past research has not shown any adverse effects from use of the CSDS, EPA would not expect significant adverse effects from using these sites. *See* 81 Fed. Reg. 24755 - 24756. At present, however, EPA is only proposing to designate the

ELDS and is requesting comment on the NBDS and CSDS.

Designation of a disposal site would also likely have indirect effects on coastal uses because use of waters over the disposal site, such as for boating or fishing, would be precluded while dredged material is being placed at the site. Any such effects would be insignificant, however, for several reasons. First, the disposal site only occupies a small area within Long Island Sound and boaters and fishers could easily avoid the site when necessary. Second, any interference with other uses of the waters near a disposal site would only be temporary and episodic and would only occur during part of the year due to the use of “environmental windows” that restrict dredging activities to certain times of the year. Third, neither the ELDS, CSDS, nor NBDS would be located in major shipping lanes or important areas for fishing, shellfish harvesting, or boating. *See* 81 Fed. Reg. 24754.

Possible Indirect Effects at Dredging Sites

Beyond effects at the disposal site, it can also be argued that a site designation would result in indirect effects at locations where dredging will occur. This argument posits that by providing a way for dredged material to be managed, a disposal site designation enables dredging to take place and, therefore, causes indirect effects at dredging sites. After considering this argument, however, EPA concludes that effects at dredging sites would neither be significant nor be the result of any EPA site designations. Any adverse dredging effects would be insignificant because dredging is carefully regulated (*e.g.*, dredging proposals are subject to federal, state and possibly local regulatory review, and the federal government only allows dredging in Long Island Sound during certain months of the year). Moreover, such dredging would be expected to benefit public coastal uses by improving navigational safety and facilitating marine commerce and recreation, and military activities.

Furthermore, effects at dredging sites are not *caused* by site designations. The need for dredging exists regardless of whether a disposal site is designated. In addition, even without designation of the ELDS (or the NBDS or CSDS), dredging could still occur because a substantial amount of the dredged material could potentially be managed in ways other than placement at a designated site. Of course, this would depend on the quality and quantity of dredged material at issue and the availability of alternative management methods. For example, without a nearby designated disposal site, material could still potentially be placed at either open-water disposal sites *selected* by the USACE or at sites that have been *designated* by EPA outside of the eastern Sound. *See* 33 U.S.C. § 1413(b). Material could also be handled using any practicable alternatives to open-water disposal that may be available (*e.g.*, dredged sand could be used for beach nourishment). *See also* EPA’s April 2016 Proposed Rule, 81 Fed. Reg. 24748 - 24752; EPA’s April 2016 DSEIS, §§ 3.4.2.3 and 3.4.2.5. While there likely could be some dredging projects that would be unable to proceed without a relatively nearby open-water disposal site – and the effects at such dredging sites could conceivably be viewed as indirect effects of a disposal site designation – EPA finds it impossible to predict based on current information which dredging projects would fall into this category or what effects they would have on the coastal zones of New York, Connecticut, and/or Rhode Island. In any event, as stated above, EPA finds that any adverse effects on marine life or water quality from the dredging would likely be insignificant because

dredging is carefully regulated.

Possible Indirect Effects Along the Routes Used to Convey Dredged Material to Disposal Sites

Finally, designating the ELDS (or the NBDS or CSDS) could also indirectly affect the coastal zones of Connecticut, New York and/or Rhode Island as a result of barges travelling from dredging locations to the disposal site (, and/or Rhode Island's coastal zones as a result of barges travelling from dredging locations to the disposal site (or sites). Such barge trip effects are not considered to be significant, however, and conditions are in place to help prevent any significant adverse effects. Barge and navigation technology is used to ensure that sediments are placed only at the intended disposal site locations. The regulations also preclude disposal trips during threatening sea conditions. *See* 81 Fed. Reg. 24757, 24760; 40 C.F.R. § 228.15(b)(4)(vi)(I). Moreover, the environmental effects of vessel trips might be similar or worse even if no disposal sites are designated in the eastern Sound because similar or even longer trips might be needed to take the material to USACE-selected disposal sites in the region, to beneficial reuse sites in the region, or to more distant disposal sites outside of the region. In addition, if dredging projects have to be cancelled due to the lack of a designated open-water disposal site, sediment build-up in the channels and harbors of the eastern region of Long Island Sound would harm coastal uses and result in navigational hazards that could cause vessel accidents that themselves would harm the environment as well as public safety.

In sum, designating the ELDS (or NBDS or CSDS) would have no direct effects on the coastal zones of New York, Connecticut or Rhode Island, but could have indirect effects on coastal resources and uses at the disposal site(s), when a designation is considered together with reasonably foreseeable future authorizations to place dredged material at the designated site. *See* 15 C.F.R. § 930.11(g). These indirect effects would not, however, be significant. In addition, EPA finds that a site designation would not cause indirect effects at local dredging sites, but if the designation was regarded to cause such indirect effects, those effects would be indeterminate and insignificant. Finally, the site designation could have indirect effects along the navigational routes to the disposal sites but these effects would be insignificant.

3. *Connecticut's Coastal Zone*

The ELDS delineated in EPA's April 2016 Proposed Rule is located in Connecticut state waters, but for a very small area making up the far southeastern corner of the site which extends into New York waters. Some public comments on the Proposed Rule urged EPA to adjust the ELDS boundary so that the entire site would be in Connecticut waters. EPA is also considering shifting the eastern boundary of the proposed ELDS to the west in order to move the site out of the main ship channel into the Thames River. This also would move the site entirely out of New York waters. EPA concludes that the area being excised from the site is so small that eliminating it would not significantly reduce the capacity of the site or otherwise significantly affect the site. As a result, EPA is currently planning to make this change to the ELDS boundary so that the site would be entirely within Connecticut waters.

The NBDS alternative also lies entirely in Connecticut waters. Therefore, the indirect effects at

the disposal sites of designating the ELDS and/or the NBDS would occur entirely in Connecticut waters and Connecticut's coastal zone.

The CSDS is approximately 83 percent in Connecticut waters and 17 percent in New York waters. Therefore, the indirect effects at the disposal site of designating the CSDS would occur primarily in Connecticut's waters and coastal zone, but would also extend to New York's waters and coastal zone. Moreover, because the CSDS is a dispersive site (with bottom currents tending to move material to the west), the indirect effects of placing dredged material at this site would likely be more widespread and could have indirect effects on the waters and coastal zones of both states.

In addition, insignificant indirect effects on Connecticut's coastal zone would be caused by dredging at sites located in Connecticut's coastal waters, and by barges travelling to the disposal sites through waters in Connecticut's coastal zone. At the same time, not going forward with a site designation would likely have greater adverse effects on uses of Connecticut's coastal zone by allowing a buildup of sediment that could impact navigational safety, marine commerce and recreation, and military activities.

Considering the full range of issues, EPA has determined that designating the ELDS would be fully consistent with the enforceable policies of Connecticut's CZMA program. EPA is sending CT DEEP a determination to that effect.

4. Rhode Island's Coastal Zone

Designation of the ELDS (and/or the NBDS or CSDS) is not expected to have direct or indirect effects on Rhode Island's coastal zone. All of these sites are outside Rhode Island's coastal zone and use of the sites would not be expected to have any effects on Rhode Island waters. Due to the availability of dredged material disposal sites in Rhode Island, dredged material from Rhode Island waters would likely be taken to these Rhode Island sites and would not likely be taken to any site in the eastern region of Long Island Sound. As a result, designating one or more of these sites would also not be likely to have any indirect effects either at dredging sites within Rhode Island or along marine transit routes from Rhode Island to the disposal sites. In addition, designation of the ELDS (or the NBDS or CSDS) would reduce the likelihood that dredging proponents in eastern Long Island Sound would need to use the previously designated Rhode Island Sound Disposal Site (RISDS). This will preserve capacity at that site for the potential use of dredging projects in Rhode Island and southeastern Massachusetts, as originally planned when the site was designated.

EPA will provide a federal consistency determination to the Rhode Island Coastal Resources Management Council (RI CRMC), which administers the state's Coastal Management Program.

5. *New York's Coastal Zone*

As discussed above, the proposed ELDS lies almost entirely outside of New York state waters, except for a small part in the southeastern corner, and EPA intends to shift the boundary so that it would be located entirely outside of New York's waters if it decides to designate that site. Nevertheless, the site's re-delineated southeastern corner would still be just northwest of New York waters. 81 Fed. Reg. 24751-24752. Scientific analysis supporting the proposed site designation, and discussed in EPA's April 2016 Draft DEIS, indicates that the site would retain material placed there and that any temporary perturbations in water quality during disposal events would remain within the site boundaries. *See, e.g.*, 81 Fed. Reg. 24751, 24754-24755. Thus, these effects, if any, would occur only in Connecticut's coastal zone. Even the possibility of adverse effects would be limited to October through April due to the time-of-year restrictions that preclude most dredging during the other months in order to avoid possible effects on marine organisms. 81 Fed. Reg. 24751-24752, 24756. In addition, based on the scientific information collected for the site designation studies and the USACE PEIS, and due to the restrictions on the quality of material that may be placed at designated dredged material disposal sites, potential adverse impacts to fish, lobsters or other organisms residing in, or transiting, the sites would only be short-term, limited effects. *See, e.g.*, 81 Fed. Reg. 24756; Final PEIS, Chapter 5.

The NBDS is entirely outside of New York's coastal zone. For this site, EPA again found that any temporary perturbations in water quality during disposal events would remain within the site boundaries. *See* 81 Fed. Reg. 24754. With regard to the ultimate fate of sediment placed on the seafloor, part of the NBDS is a containment site, and part of the site is dispersive. Material placed in the containment area would remain there, but material placed in the dispersive area would likely be removed from the site by bottom currents. This is a key reason that EPA decided not to propose the designation of the NBDS at this time. If EPA decided to designate the NBDS, it would consider excluding the dispersive area. In that case, use of the site would not affect New York's coastal zone. If the NBDS containment area alone would not provide sufficient disposal capacity, EPA could either designate it together with part or all of the ELDS, or EPA could also designate the dispersive area of the site, but include restrictions that would limit the quality of the material that could be placed in the dispersive area. For example, EPA could impose a site use restriction limiting material placed in the dispersive area to sand that had been found suitable for open-water disposal. *See* 81 Fed. Reg. 24755-24756. With either approach, EPA would not expect such a designation to significantly affect New York's coastal zone.

Finally, turning to the CSDS, 17 percent of the site is located in New York waters, while 83 percent is in Connecticut's waters, and the entire site is dispersive. 81 Fed. Reg. 24751-24752, 24755. EPA is not proposing to designate this site, but if it was designated, the designation would have indirect effects on New York's coastal zone because dredged material placed at the site would travel through the water column and land on the seafloor in New York waters, and because material would be dispersed (primarily to the west) by bottom currents and material could end up in New York waters. These effects would not be expected to have any significance, however, because strict limitations on the type of material that could be placed at the site would be instituted. *See* 81 Fed. Reg. 24751, 24755-24756. The CSDS has been managed in this

manner in the past and monitoring has not revealed any adverse environmental effects from use of the site. *See* 81 Fed. Reg. 24751, 24755-24756. Thus, while material placed at this site could end up in New York waters and, thus, affect New York's coastal zone, no significant effects would be expected.

If any of the three alternative sites were designated, then dredging projects in New York waters might utilize one of the sites for materials management. As with dredging sites in Connecticut's coastal zone, EPA does not expect a site designation to result in significant indirect effects to uses and/or resources of New York's coastal zone at New York dredging sites. While there might be some indeterminate amount of dredging that would not occur without a site being designated, dredging is carefully regulated by federal, state and local authorities to prevent adverse environmental effects. Moreover, there could be even more substantial adverse effects on New York's coastal uses and resources if failure to designate an open-water disposal site caused needed dredging to be postponed or cancelled. Failing to conduct needed dredging could adversely affect New York's coastal zone by compromising navigational safety and impeding vessel access to marinas, harbors and navigational channels in New York waters.

Finally, EPA does not expect designation of any of the alternative sites to have indirect effects of any significance on New York's coastal uses and resources as a result of barges travelling through New York waters to take dredged material to the disposal sites. Such barge traffic can be safely managed, *see* 81 Fed. Reg. 24757, and the above-discussed disposal site restrictions will ensure that barge trips will not be undertaken during severe sea conditions that might threaten an accident. *See* 81 Fed. Reg. 24760; 40 C.F.R. § 228.15(b)(4)(J). Moreover, barge trips to the disposal site will be minimized by the requirement that material can only be disposed of at the disposal sites when there is no practicable alternative available to open-water disposal, and based on the time-of-year restrictions that preclude dredging during the late spring and summer months. The latter restrictions will also, in effect, preclude dredged material barge trips during the busiest recreational boating and tourism months of the year. At the same time, because managing dredged material with methods other than open-water disposal also typically involves barging the material to those alternative sites, designating the ELDS is unlikely to result in a significant overall increase in barge trips in New York's coastal zone.

6. *EPA Will Submit CZMA Consistency Determinations to Connecticut, New York, and Rhode Island*

Because of the possibility that the proposed designation of the ELDS would have indirect effects on coastal uses and resources of New York (and Connecticut and Rhode Island), albeit insignificant effects, EPA is submitting this CZMA consistency determinations to NY DOS. (EPA is also submitting a consistency determination to CT DEEP and RI CRMC. *See* 15 C.F.R. § 930.155. Despite EPA's conclusion that any effects from the proposed action on New York's coastal zone will be insignificant, it still appears appropriate for EPA to provide this determination under NOAA regulations because EPA does not have an agreement with NY DOS to treat the proposed action as having *de minimis* effects. *See* 15 C.F.R. §§ 930.33(a)(3) and 930.35(a)(3) (negative declaration is submitted when it is determined there will be *no* effects).

Again, as previously described, EPA is not proposing an entirely new disposal site; rather, it is proposing to designate a site, the ELDS, which includes a portion of the current NLDS – with another portion of the NLDS excluded from the ELDS – along with additional, adjacent areas, all located in Connecticut waters. At the same time, EPA is adding new standards and procedures beyond those that have been applied to the NLDS in the past. These new standards and procedures would restrict use of the ELDS and, among other things, strengthen the existing process for finding alternatives to open-water disposal in order to reduce or eliminate such open-water disposal whenever practicable. These restrictions mirror those applicable to the CLDS and WLDS.

V. Pre-Consistency Determination Consultation Between EPA and NY DOS

EPA has extensively consulted and coordinated with NY DOS (and others) in connection with dredged material management in Long Island Sound, including the proposed designation of the ELDS dredged material site. The 2005 CZMA consistency process for the original designations of the CLDS and WLDS involved a lengthy and detailed negotiation over the site designation restrictions for those sites. As discussed in the NEPA documents for the CLDS and WLDS designations, EPA decided to address the eastern region of Long Island Sound in a subsequent decision-making process. *See* 70 Fed. Reg. 32509 (“In March 2002, ... EPA published an Environmental News Notice announcing its intent to modify the ZSF and the scope of the EIS in order to assess the need for open-water disposal sites in Long Island Sound in two phases, with the first EIS to address the central and western regions of the Sound and a later Supplemental EIS to address the eastern region of the Sound.”).

Since designation of the CLDS and WLDS in 2005, EPA has continued working with NY DOS and other federal and state agencies on numerous issues related to the management of dredged material in Long Island Sound. For example, EPA has been a member of the Long Island Sound RDT and has actively participated on the steering committee established by the USACE to help guide its development of the LIS DMMP. EPA and NY DOS personnel also have had numerous informal discussions and participated in a number of meetings to discuss issues related to the management of dredged material in the Sound. Such issues have included development of the LIS DMMP, development of amendments to the site designation regulations for the CLDS and WLDS, and the possible designation of a dredged material disposal site in the eastern region of the Sound.

Directly related to the current CZMA process, EPA sent NY DOS an early coordination letter on December 22, 2015, requesting certain “guidance and assistance” consistent with 15 C.F.R. §930.34(d). *See* Letter from Kenneth Moraff, EPA, to Hon. Cesar A. Perales, Secretary of State, NY DOS (December 22, 2015). EPA explained that it was planning both to revise the disposal site designation regulations for the CLDS and WLDS following completion of the DMMP by the USACE, *see* 40 C.F.R. § 228.15(b)(4)(vi)(G), and to consider whether to designate one or more disposal sites in the eastern region of Long Island Sound. Accordingly, EPA requested that NY DOS provide a copy of, or reference to, New York’s current, up-to-date CMP. EPA also requested that NY DOS “identify any enforceable policies [of its coastal zone management

program] applicable to the proposed activit[ies] ...,” and provide its “‘views and assistance’ regarding ‘the means for determining that the proposed activity will be consistent to the maximum extent practicable with the enforceable policies of ... [your] management program’” (quoting 15 C.F.R. §930.34(d)).

On January 5, 2016, NY DOS sent a letter to EPA expressing appreciation for EPA’s early notice of its forthcoming consistency determinations. *See* Letter from Jeffrey Zappieri, NY DOS, to Kenneth Moraff, EPA (January 5, 2016). This letter informed EPA that “consistency determinations of your actions’ potential coastal effects should be based on the coastal policies contained in the Long Island Sound Coastal Management Program (LIS CMP), a regional refinement of the New York CMP,” and provided website references for the material. NY DOS also indicated that it would provide further information in subsequent correspondence.

On January 19, 2016, NY DOS sent its follow-up correspondence to EPA. *See* Letter from Jeffrey Zappieri, NY DOS, to Kenneth Moraff, EPA (January 15, 2016). NY DOS reiterated that EPA must determine the consistency of its action’s with the LIS CMP and explained that NY DOS will use the LIS CMP’s 13 coastal policies when considering EPA’s consistency determination. *See also* LIS CMP, p. 1 (“The Long Island Sound Coastal Management Program replaces the state Coastal Management Program for the Sound shorelines of Westchester County, New York City to the Throgs Neck Bridge, Nassau County, and Suffolk County.”). NY DOS also indicated that “Long Island Sound also has eight federally-approved Local Waterfront Revitalization Programs (LWRPs), which are a local refinement of the NYS CMP and LIS CMP,” and that EPA’s assessment must use “the coastal policies of each Long Island Sound LWRP [(in addition to the 13 LIS CMP coastal policies)] to assess [the] coastal effects of the proposed activities on each community.” Finally, NY DOS stated that “[a]ll LIS CMP and LWRP coastal policies are enforceable”

Beyond pointing to these policies to be considered in EPA’s review, NY DOS also presented an initial evaluation of EPA’s proposed activities, stating that:

[b]ased on a preliminary policy assessment of EPA’s proposed activities, DOS has concerns that they will affect New York’s coastal resources and several policies contained in the Long Island Sound CMP and LWRPs as the proposed designation of disposal sites has the potential to cause significant adverse changes to the quality of the Long Island Sound ecosystem including physical loss, degradation, or functional loss of ecological components.

NY DOS caveats its assessment by stating:

... that this assessment does not constitute a consistency concurrence or objection, [and] is provided solely as part of a consultation and coordination process and the omission of an assessment of a specific policy in this letter should not necessarily be construed to mean that the policy is not applicable. Therefore, DOS reserves the right to engage the EPA in further consultation as details of the two proposed

activities become available to DOS.

Beyond expressing “concerns,” NY DOS then goes on to state that (emphasis in the original):

DOS’s initial assessment of the proposed federal activities’ impacts finds that adverse effects on New York State coastal resources, and users of those resources, are possible as a result of designation of the proposed disposal sites and continued open water disposal of dredged materials. EPA should consider whether the designation of dredge disposal sites and the consequent unabated dumping of sediments, which will degrade the Sound and threaten its environmental resources and economic viability, may impact the following policies during the consistency determination process:

LIS CMP Coastal Policies:¹⁰

Policy 1: Foster a pattern of development in the Long Island Sound coastal area that enhances community character, preserves open space, makes efficient use of infrastructure, makes beneficial use of a coastal location, and minimizes adverse effects of development.

1.4: Maintain and enhance natural areas, recreation, open space, and agricultural lands.

Policy 5: Protect and improve water quality and supply in the Long Island Sound coastal area.

5.2: Manage land use activities and use best management practices to minimize nonpoint pollution of coastal waters.

5.3: Protect and enhance the quality of coastal waters.

Policy 6: Protect and restore the quality and function of the Long Island Sound ecosystem.

6.1: Protect and restore ecological quality throughout Long Island Sound.

6.2: Protect and restore Significant Coastal Fish and Wildlife Habitats.

6.3: Protect and restore tidal and freshwater wetlands.

6.5: Protect natural resources and associated values in identified regionally important natural areas.

Policy 8: Minimize environmental degradation in the Long Island Sound

¹⁰ <http://www.dos.ny.gov/opd/programs/WFRevitalization/longisland.html>

coastal area from solid waste and hazardous substances and wastes.

8.1: Manage solid waste to protect public health and control pollution

8.3: Protect the environment from degradation due to toxic pollutants and substances hazardous to the environment and public health.

Policy 10: Protect Long Island Sound's water-dependent uses and promote siting of new water-dependent uses in suitable locations.

10.6: Provide sufficient infrastructure for water-dependent uses.

Policy 11: Promote sustainable use of living marine resources in Long Island Sound.

11.1: Ensure the long-term maintenance and health of living marine resources.

EPA shares NY DOS's concern about protecting and restoring the environment of Long Island Sound and agrees to assess its proposed designation of a dredged material disposal site in the eastern region of Long Island Sound in light of the policies identified by NY DOS. EPA does not, however, agree that the record supports the assertion in NY DOS's letter that "the designation of dredge disposal sites and the consequent unabated dumping of sediments ... will degrade the Sound and threaten its environmental resources and economic viability" Properly regulated, open-water disposal of dredged material can be utilized in an environmentally sound way and provides an important management option when no practicable alternatives are available. Dredging *and* environmentally sound dredged material management are both needed within Long Island Sound to ensure safe navigation for marine-based recreation, commerce and military activities, and to protect the Sound's environment. EPA's decision-making is guided by these twin imperatives.

The LIS CMP recognizes the importance of dredging and its proper management (*see* p. 60). Recommendation 38 in the LIS CMP (p. 63) calls for steps to:

[i]mprove the economic viability of maritime centers, by working with local governments and the private sector to identify opportunities and priorities for public and private investments to upgrade necessary infrastructure such as: ... maintenance dredging of navigation channels and anchorage basins, docks, and piers

LIS CMP Recommendation 39 urges steps to locate funding for improving infrastructure for the Sound's maritime centers. The text supporting this Recommendation states:

[a] critical and costly infrastructure problem is the need to maintain adequate depths in existing navigation channels and basins to ensure unobstructed and efficient vessel access to and from maritime centers and ports. Obstructed navigation channels and basins, caused by excessive sediment accumulation, adversely affects the state's intermodal transport system, rendering it inefficient and unsafe. This is a pressing issue facing nearly all of the state's maritime centers and ports. Many private or local government dredging proposals have either been significantly reduced in scale or abandoned all together due to prohibitive project costs for sediment testing, dredging, and disposal.

LIS CMP, p. 64. Recommendation 49 calls for efforts to ensure completion of dredging needed to meet the “current and future needs of water-dependent commercial and industrial uses of Long Island Sound.” *Id.* at 69.

In addition, Recommendation 50 calls for steps to “[e]xpeditate and coordinate dredging projects within maritime centers.” *Id.* The supporting text for Recommendation 50 states that:

[d]redging and disposal of contaminated material are not well coordinated. This lack of coordination typically results in: the misuse of valuable sand supplies for non-related shoreline projects; excessive delays in completing simple maintenance dredging because suitable dredged material disposal sites remain unidentified; and the inability of dredging sponsors to take advantage of combining their projects to reduce costs.

Id. EPA actions to provide an appropriate open-water disposal option for suitable material and enhance the process for evaluating dredged material management alternatives for specific projects, should facilitate improved project planning and ensure optimal management of the material.

For the central and western regions of Long Island Sound, EPA’s designation of the CLDS and WLDS, with the accompanying restrictions on the use of the sites, should help address many of the problems noted in the LIS CMP. The site designations provide environmentally acceptable disposal sites for the placement of suitable material when no practicable management alternatives are available. The designations also create the RDT process for project review and adopt standards to help direct material to appropriate sediment management alternatives, such as beach nourishment. NY DOS’s Conditioned Concurrence with the site designations indicates that it shares EPA’s view that these steps should be effective, while, of course, recognizing that successful implementation of the new standards and procedures stills lies ahead.

For the eastern region of the Sound, EPA is proposing to designate the ELDS (or another site or sites) and apply the same restrictions on its use as are applied to the CLDS and WLDS. This approach should be equally successful in the eastern Sound and will serve the goal of reducing or eliminating dredged material disposal in the Sound. Designating the ELDS with the specified

restrictions will promote the development and use of practicable alternatives to open-water disposal, while also ensuring environmentally sound open-water disposal when practicable alternatives are not available.

Dredging and dredged material management must be conducted in an environmentally sound way. EPA and NY DOS share this goal and NY DOS has played an important role in helping to shape EPA's environmentally protective regulations. EPA's site designation regulations for the ELDS will protect the environment while also allowing needed dredging to be carried out. Thus, EPA has determined that its proposed site designation would be fully consistent or, at a minimum, consistent to the maximum extent practicable, with the enforceable provisions of New York's coastal management program.

VI. Evaluation of the Policies of the LIS CMP

NOAA's CZMA regulations indicate that a federal agency consistency determination:

... shall include a brief statement indicating whether the proposed activity will be undertaken in a manner consistent to the maximum extent practicable with the enforceable policies of the management program. The statement must be based upon an evaluation of the relevant enforceable policies of the management program. A description of this evaluation shall be included in the consistency determination. The consistency determination shall also include a detailed description of the activity, its associated facilities, and their coastal effects, and comprehensive data and information sufficient to support the Federal agency's consistency statement. The amount of detail in the evaluation of the enforceable policies, activity description and supporting information shall be commensurate with the expected coastal effects of the activity. The Federal agency may submit the necessary information in any manner it chooses so long as the requirements of this subpart are satisfied.

15 C.F.R. § 930.39(a). This consistency determination satisfies these requirements. It includes a brief statement that the proposed activity will be consistent to the maximum extent practicable with the enforceable policies of the management program. This statement is based upon EPA's evaluation of the relevant enforceable policies of the State of New York's CMP, as refined by the LIS CMP and the relevant LWRPs, and this evaluation, along with a detailed description of the proposed activity and its coastal effects, is included herein. Furthermore, in support of this consistency determination, data and information has been provided commensurate to the expected coastal effects of the activity.

As described above, NY DOS instructed EPA that because the amendments to the CLDS and WLDS site designation regulations relate to actions with potential coastal effects within the geographical boundaries of Long Island Sound, EPA's consistency determination "should be based on the coastal policies contained in the Long Island Sound Coastal Management Program (LIS CMP), a regional refinement of the New York CMP." Letter from Jeffrey Zappieri, NY

DOS, to Kenneth Moraff, EPA (January 5, 2016). Therefore, EPA's analysis focused on the LIS CMP. EPA also focused on the LWRPs applicable within the eastern portion of Long Island Sound. In its April 25, 2016, Conditioned Concurrence with EPA's designation of the CLDS and WLDS, NY DOS explained (at p. 3) that:

[i]n addition to the enforceable coastal policies of the LIS CMP, it is noted that there are several Local Waterfront Revitalization Programs (LWRPs) adjacent to the planning area for the DMMP that would be affected by the proposed amendments to the site designations. Generally, the policy numbers and objectives of each LWRP mirror those of the Long Island Sound CMP. This coastal policy analysis is inclusive of the LIS CMP and LWRPs.

Accordingly, NY DOS's discussion of the relevant policies of the LIS CMP was also considered to cover the policies of the LWRPs and no separate, specific discussion of the LWRPs was provided. This indicates that a separate discussion of the LWRPs is not required.

A. EPA Evaluation of Specific Policies from the LIS CMP

1. Policies 1 and 1.4

NY DOS's January 15, 2016, letter suggests that EPA should consider whether the designation of disposal sites and continued placement of dredged material at the sites "may impact" LIS CMP Policies 1 and 1.4. EPA concludes that these policies will not be affected because they are focused on objectives for upland land use control, while EPA's action deals with dredged material management. EPA also notes that in NY DOS's April 25, 2016, Conditioned Concurrence, NY DOS did not address Policies 1 and 1.4 at all. Thus, it appears that NY DOS also ultimately concluded that these policies did not apply to the designation of dredged material disposal sites in Long Island Sound. To the extent that these policies do apply, however, EPA's proposed action is fully consistent with them.

Policies 1 and 1.4 state the following:

Policy 1: Foster a pattern of development in the Long Island Sound coastal area that enhances community character, preserves open space, makes efficient use of infrastructure, makes beneficial use of a coastal location, and minimizes adverse effects of development.

1.4: Maintain and enhance natural areas, recreation, open space, and agricultural lands

Based on a review of the text of these policies, as well as the supporting explanatory material in the LIS CMP, EPA understands that Policies 1 and 1.4 are intended to promote a pattern of development befitting the character of the communities along Long Island Sound. They seek to

provide overarching guidelines that will help shape development in a manner consistent with the existing pattern of developed and open land that helps to define the region's character. Policy 1 also seeks to promote the efficient use of infrastructure, the preservation of open space, and the beneficial use of Long Island Sound's coastal location.

To the extent that these policies apply, designating the ELDS (or the NBDS or CSDS) would be fully consistent with them. EPA's is proposing to designate the ELDS with restrictions that will serve the goal of reducing or eliminating dredged material disposal in Long Island Sound. Designating the ELDS (or the NBDS or CSDS) would not affect upland land use or the pattern of upland development. EPA's action affects dredging and dredged material disposal (a) by providing for the use of an open-water disposal site as an option for the management of suitable dredged material for which there is no other practicable management alternative, and (b) by creating procedures and standards for site use that are geared to reducing or eliminating the need to use that site. While EPA's action will promote use of practicable alternatives to the open-water placement of dredged material, such as upland beneficial uses, and this could be viewed as having the potential to affect land uses, such upland management of dredged material will only occur when it is *practicable* and all requirements applicable to it are satisfied. Thus, open space and other existing uses and use patterns will not be adversely unaffected.

Furthermore, EPA's action should contribute to maintaining and enhancing community character, recreation, natural areas and beneficial uses of coastal locations. Providing the ELDS (or another site or sites) as a dredged material management option for eastern Long Island Sound will facilitate dredging needed to maintain safe navigation and berthing areas and, as a result, will support and enhance marine recreation, beneficial uses of coastal locations, and the character of the Sound's coastal communities. By ensuring the accessibility of existing navigation channels and berthing areas, EPA's action will help provide for the efficient use of existing infrastructure. Moreover, EPA's action will help to promote practicable beach nourishment projects, and other beneficial uses, for appropriate dredged material, which should further maintain and enhance natural areas, open space and recreation. Finally, EPA's proposed action will promote source control efforts to reduce sediment and contaminant loadings that adversely affect the quantity and quality of dredged materials. This should also support the protection and enhancement of natural areas.

Finally, while acknowledging that NY DOS's letter of January 15, 2016, states that all the referenced LIS CMP policies are "enforceable policies," it is not clear to EPA that the policies discussed above are, in fact, "enforceable policies" of the state's coastal management program under NOAA's regulations. *See* 15 C.F.R. § 930.11(h) ("An enforceable policy shall contain standards of sufficient specificity to guide public and private uses."). In any event, EPA has fully considered these policies as urged by 15 C.F.R. § 930.39(c) ("Federal agencies should give consideration to management program provisions which are in the nature of recommendations.").

2. Policies 5, 5.2 and 5.3

NY DOS's January 15, 2016, letter also suggests that EPA should consider whether the designation of disposal sites and continued placement of dredged material at the sites "may impact" LIS CMP Policies 5, 5.2 and 5.3. EPA notes, however, that NY DOS's April 25, 2016, Conditioned Concurrence for the CLDS and WLDS designations addressed only Policies 5 and 5.3. Apparently, NY DOS ultimately concluded that Policy 5.2 is not implicated by the designation of dredged material disposal sites in Long Island Sound. In any event, EPA's proposed action is fully consistent with all three of these policies.

Policies 5, 5.2 and 5.3 provide as follows:

Policy 5: Protect and improve water quality and supply in the Long Island Sound coastal area.

5.2: Manage land use activities and use best management practices to minimize nonpoint pollution of coastal waters.

5.3: Protect and enhance the quality of coastal waters.

Based on a review of their text, as well as the supporting explanatory material in the LIS CMP, EPA understands that these policies are intended to promote the protection of water quality and water quantity. The LIS CMP (p. 77) explains that "[t]he primary quantity consideration is the maintenance of an adequate supply of potable water in the region." EPA's action will have no bearing on the quantity of potable water in Long Island Sound and, therefore, this aspect of these policies is not relevant to EPA's action.

Moreover, Policy 5.2 is not relevant to the proposed designation of the ELDS (or another open-water disposal site). This policy pertains to land use management and promoting the use of best management practices for minimizing nonpoint pollution of coastal waters. While this policy is not implicated by EPA's proposed designation of an open-water dredged material disposal site, EPA's proposed action is entirely consistent with it. Indeed, one of the restrictions on site use calls for federal, state and local authorities to continue efforts to reduce pollutant loadings to the waters of Long Island Sound. *See* 81 Fed. Reg. 24764-24765; 81 Fed. Reg. 44229 (40 C.F.R. § 228.15(b)(4)(vi)(D)).

The water *quality* aspects of Policies 5 and 5.3 are, however, relevant to EPA's proposed action. As stated in their text, these policies seek to promote the protection and improvement (or enhancement) of the quality of Long Island Sound's coastal waters. The LIS CMP's explanatory text (p. 78) focuses on the need to consider "both point source and nonpoint source pollution management," and states that, "[w]ater quality protection and improvement in the region must be accomplished by the combination of managing new and remediating existing sources of pollution." In addition, the LIS CMP's discussion accompanying Policy 5.3 (p. 78) urges actions to "[p]rotect water quality of coastal waters from adverse impacts associated with excavation, fill, dredging, and disposal of dredged material."

EPA's action will be fully consistent with these policies. EPA's proposed action does not itself authorize dredging or disposal of dredged material; it would only make the ELDS (or another site alternative) available for placement of suitable dredged material for which there is no practicable alternative management method available. The dredging itself is regulated under federal and state authorities apart from the MPRSA and such regulation should ensure that water quality is protected. Any proposal to place dredged material at the ELDS (or the NBDS or CSDS) would be regulated under the MPRSA under a regulatory process entirely separate from this site designation proceeding. Before placement of dredged material at the ELDS (or alternative sites) would be authorized in that separate process, the material would have to satisfy the strict sediment quality requirements of EPA's regulations, *see* 40 C.F.R. Part 227, and it would have to have been demonstrated that no practicable alternative to placing the material at the open-water disposal site was available that would have less adverse environmental impact. Furthermore, as discussed above, the restrictions that would apply to the ELDS (or other sites) will bolster these preexisting legal requirements and help to ensure that available, practicable alternatives are identified and used, thereby supporting the DMMP's overarching goal of reducing or eliminating open-water disposal.

It also should be understood that neither EPA's proposed action, nor any future authorization to place dredged material at the ELDS (or other sites), will involve pollutants being newly introduced to the waters of Long Island Sound or its watershed. Use of the sites would be restricted to suitable material dredged from the waters of "Long Island Sound and its vicinity." 40 C.F.R. § 228.15(b)(4)(vi)(A); 81 Fed. Reg. 24767 (40 C.F.R. § 228.15(b)(6)(vi)). 40 C.F.R. § 228.15(b)(4)(vi)(A). Dredged material is, by definition, material that is *already* in the water. In other words, placing dredged material at the ELDS (or other sites) would involve moving material from a site(s) within the waters of the Sound (or its vicinity) to another location in the waters of the Sound; upland wastes will not be placed at the site.

We further note that the ELDS, with the boundary adjustment discussed above, would be located entirely in Connecticut waters and that past research and analysis demonstrates that there will be no adverse water quality impacts outside the disposal site and that within the site, the only water quality effects will be short-term effects from a disposal event that would occur as the material travels through the water column to the seafloor. Again, any material placed at the site would have to have satisfied the protective physical, chemical and biological criteria of EPA's regulations. If any unsuitable material is found, that material would have to be managed by other means, or the dredging will not move forward.¹¹ Finally, as discussed farther above, and as is consistent with these LIS CMP policies, EPA's proposed restrictions on use of the ELDS call for federal, state, and local regulators to continue to exercise their authorities to reduce the flow of sediment into the watershed of Long Island Sound. *See* 81 Fed. Reg. 24754-24756. This analysis for the ELDS also holds true for the non-dispersive section of the NBDS.

¹¹ Unless a waiver is provided, *see* 33 U.S.C. § 1413(d), but, as discussed above, EPA is not aware of such a waiver ever having been granted.

Any material placed at either the dispersive part of the NBDS or the CSDS, however, would not be expected to stay within the site. Material placed at these locations would tend to be dispersed to the west by prevailing currents. To ensure that there are no adverse environmental effects from such dispersion, EPA would further restrict the type of material that could be placed at these sites.

EPA notes that although NY DOS's letter did not identify Policy 5.1 as relevant to this review, EPA also has considered it and determined that the proposed action will be fully consistent with it. Policy 5.1 urges that actions should "[p]rohibit direct or indirect discharges which would cause or contribute to contravention of water quality standards." The LIS CMP's explanatory text (p. 78) also urges that the Sound's water quality will be restored by, among other things, "remediating existing contaminated sediment, and limiting introduction of new contaminated sediment." Thus, Policy 5.1 appears focused on point and non-point discharges to the waters of Long Island Sound, which is probably why NY DOS did not indicate that it needed to be considered here. These types of pollutant discharges are primarily addressed by a variety of Clean Water Act programs implemented by New York, Connecticut, and EPA (*e.g.*, the National Pollutant Discharge Elimination System and state nonpoint source management programs). That said, EPA's current proposed action also is consistent with this policy. By facilitating dredging without allowing unsuitable sediments to be placed at the ELDS (or other sites), and while also using the RDT process to promote the identification and use of alternative dredged material management methods, the introduction of new contaminated sediments will be prohibited and some remediation of contaminated sediments is likely to occur. In other words, this is not a concerted sediment remediation program, but ensuring proper management of existing contaminated sediment dredged from the waters of Long Island Sound and its vicinity will likely result in some remediation of existing contaminated sediments. Furthermore, as mentioned above, EPA's proposed action urges authorities to continue existing efforts to reduce sediment and contaminant loading to the waters of Long Island Sound, which should help to achieve the goal of "limiting the introduction of new contaminated sediment."

Again, it is not clear to EPA that the LIS CMP policies discussed immediately above constitute "enforceable policies" of the state's coastal management program under NOAA regulations. *See* 15 C.F.R. § 930.11(h) ("An enforceable policy shall contain standards of sufficient specificity to guide public and private uses."). Regardless of this uncertainty, however, EPA has fully considered these policies as urged by 15 C.F.R. § 930.39(c).

3. Policies 6, 6.1, 6.2, 6.3 and 6.5

NY DOS's January 15, 2016, letter suggests that EPA should consider whether the designation of disposal sites and continued placement of dredged material at the sites "may impact" LIS CMP Policies 6, 6.1, 6.2, 6.3 and 6.5. These policies provide as follows:

Policy 6: Protect and restore the quality and function of the Long Island Sound ecosystem.

- 6.1: Protect and restore ecological quality throughout Long Island Sound.**
- 6.2: Protect and restore Significant Coastal Fish and Wildlife Habitats.**
- 6.3: Protect and restore tidal and freshwater wetlands.**
- 6.5: Protect natural resources and associated values in identified regionally important natural areas.**

In addition, NY DOS's April 25, 2016, Conditioned Concurrence for the CLDS and WLDS designations indicates that Policy 6.4 is also relevant. It provides the following:

6.4: Protect vulnerable fish, wildlife, and plant species, and rare ecological communities.

EPA notes, however, that NY DOS's April 25, 2016, Conditioned Concurrence for the CLDS and WLDS designations did not identify Policy 6.3 as relevant to the action in question. Apparently, NY DOS ultimately concluded that Policy 6.3 is not implicated by the designation of dredged material disposal sites in Long Island Sound.

Based on a review of the text of these policies, as well as a review of the supporting explanatory material in the LIS CMP, EPA understands that these policies are generally intended to promote the protection and restoration of the natural resources of Long Island Sound, including their functions and interactions as parts of healthy local ecosystems. The policies also give specific attention to identified habitats or ecosystems of particular importance within the Sound.

The goals of the specified policies are summarized below. Policy 6 (p. 79) calls for the protection and restoration of Long Island Sound's ecosystem, including its "physical (non-living) components, biological (living) components, and their interactions." It also calls for the protection of specifically identified important ecosystems and natural resources, as well as more broadly distributed resources. Policy 6.1 (p. 79) calls for the protection and restoration of the Sound's ecological quality by "avoid[ing] significant adverse changes to the quality of the Long Island Sound ecosystem ...," and, among other things, "avoid[ing] permanent adverse changes to ecological processes." Policy 6.2 (p. 80) calls for the protection and restoration of Long Island Sound's designated significant coastal fish and wildlife habitats," and for minimizing any adverse effects that cannot be avoided. Policy 6.3 (p. 80) calls for the protection of tidal and freshwater wetlands consistent with state wetlands laws, and for the restoration of such wetlands wherever practical. Policy 6.5 calls for the protection of natural resources comprising regionally important natural areas.

EPA's proposed action will be fully consistent with these policies. It does not authorize any dredging or disposal of dredged material; it would only make the ELDS (or any other site that may be designated) available as an option for the placement of suitable dredged material for which there is no practicable alternative management method available with less adverse

environmental effects. The dredging itself will be regulated under other federal and state programs. Neither the transport of dredged material to the disposal site nor the disposal of suitable dredged material will cause any permanent or otherwise significant adverse changes to the quality of the ecosystem of Long Island Sound. As explained in the preamble to EPA's Proposed Rule, and is discussed above, placement of suitable dredged material at the ELDS (or the NBDS or CSDS)¹² would not cause adverse environmental effects outside of the site boundaries, and any adverse effects within the site boundaries would be localized, short-term effects. *See, e.g.*, 81 Fed. Reg. 24754-24757 (April 27, 2016).

Designation of the ELDS (or NBDS or CSDS) site also will not have any adverse effects on designated Significant Coastal Fish and Wildlife Habitats (SCFWHs) or any other identified regionally important natural area. While there are over 100 SCFWHs designated in New York waters bordering both the north and south shores of Long Island, *see* <http://www.dos.ny.gov/opd/programs/consistency/scfwhabitats.html#li>, none intersect with the ELDS (or the NBDS or CSDS). *See* https://appext20.dos.ny.gov/coastal_map_public/map.aspx (map with SCFWH layer showing). *See also* 81 Fed. Reg. 24752, 24754-24756. Moreover, the designation and use of the disposal site, consistent with the restrictions on site use, will not have any significant adverse effect on the Long Island Sound ecosystem or its aquatic organisms. *See, e.g.*, 81 Fed. Reg. 24754-24757. The use of "environmental windows" preclude dredging and dredged material disposal from April to October so as to avoid even the possibility of impacts to sensitive aquatic organisms. *See* 81 Fed. Reg. 24754, 24756, 24760. The proposed site designation (or designation of one or more of the primary alternatives) also will not have any adverse effects on endangered or threatened species listed under the federal Endangered Species Act, or on any designated critical habitat of any such species, and the proposed designation also will not adversely affect Essential Fish Habitat under the Magnuson-Stevens Fishery Conservation and Management Act. *See* 81 Fed. Reg. 24763.

While the designation of the ELDS (or the NBDS or CSDS) would not affect tidal or freshwater wetlands, the proposed regulatory changes to promote the identification and use of dredged material management methods alternative to open-water disposal could help lead to identification of dredged sediments that could be used for wetlands restoration. Of course, the sediments in question would need to be found suitable for that use and any such restoration efforts would be subject to separate regulatory oversight by state and local authorities. *See* 81 Fed. Reg. 24764.

Again, it is not clear to EPA that the LIS CMP policies discussed immediately above constitute "enforceable policies" of the state's coastal management program under NOAA regulations. *See* 15 C.F.R. § 930.11(h) ("An enforceable policy shall contain standards of sufficient specificity to guide public and private uses."). Regardless of this uncertainty, however, EPA has fully considered these policies as urged by 15 C.F.R. § 930.39(c).

¹² As discussed farther above, additional restrictions would be applied on the type of material that could be placed in the dispersive part of the NBDS or anywhere in the CSDS, which is entirely a dispersive site. Such restrictions would prevent significant adverse effects from any material that was dispersed from the sites.

4. Policies 8, 8.1 and 8.3

NY DOS's January 15, 2016, letter suggests that EPA should consider whether the designation of disposal sites and continued placement of dredged material at the sites "may impact" LIS CMP Policies 8, 8.1, and 8.3. These policies provide as follows:

Policy 8: Minimize environmental degradation in the Long Island Sound coastal area from solid waste and hazardous substances and wastes.

8.1: Manage solid waste to protect public health and control pollution.

8.3: Protect the environment from degradation due to toxic pollutants and substances hazardous to the environment and public health.

NY DOS's April 25, 2016, Conditioned Concurrence for the CLDS and WLDS designations did not, however, identify Policy 8.1 as relevant. Apparently, NY DOS ultimately concluded that dredged material disposal site designations in Long Island Sound do not implicate Policy 8.1. As this policy deals with solid waste management, EPA agrees with this judgment.

Based on a review of the text of Policies 8, 8.1 and 8.3, as well as the supporting explanatory material in the LIS CMP, EPA understands that these policies are intended to prevent environmental harm to the natural resources of Long Island Sound from solid waste and hazardous and toxic substances, including hazardous wastes. EPA's proposed action is fully consistent with these policies of the LIS CMP. The goals of the specified policies are summarized below.

Policy 8 calls for minimization of any degradation to Long Island Sound's environment from solid waste and hazardous substances. The explanatory text (p. 81) indicates that this policy focuses on waste management on the land. It also urges attention, however, to identify and address sources of soil and water contamination resulting from, among other things, "in-place sediment contamination." This policy does not appear relevant to EPA's proposed action because the proposed ELDS disposal site designation does not address the land-based management of solid or hazardous waste. Indeed, it does not address the management of solid waste in any respect; it involves the proposed designation of an open-water disposal site to provide an option for the management of suitable dredged material when no practicable alternatives are available.

EPA's proposed action is not part of a program for identifying or remediating contaminated sediments which might be contributing to localized water quality problems. Such contaminated sediments would be prohibited from being placed at the ELDS (or the NBDS or CSDS) under the applicable regulations. Decisions about whether to dredge such sediments and how to manage them if dredged, whether on land or at a confined in-water disposal facility, would be subject to a separate regulatory process. While the sediment quality testing required for proposed dredged material disposal projects under EPA's MPRSA regulations might identify contaminated sediment, that is a function of existing MPRSA requirements rather than the current proposed action. Finally, to the extent that Policy 8 can be understood to apply to the control of sources of

contaminant loading to existing sediments, EPA's proposed action is consistent with the policy because EPA is proposing site restrictions that promote and support the control of such sources of sediment contamination.

Policy 8.1 calls for solid wastes to be managed to protect public health and control pollution. According to the explanatory text (p. 81), this policy calls for planning to ensure proper solid waste disposal before undertaking development activity. It also calls for solid waste management using recycling, reuse, and other approved methods of management, such as land burial, in order to reduce solid waste volumes. In addition, the policy calls for "proper handling, management, and transportation practices ..." to "prevent the discharge of solid wastes into the environment ...," and for solid waste management facilities to be operated to prevent environmental pollution or other conditions harmful to public health.

As mentioned above, NY DOS apparently no longer views Policy 8.1 as relevant to disposal site designations in Long Island Sound and EPA agrees with this conclusion. Policy 8.1 could only possibly be relevant to EPA's proposed action if dredged material is categorized as "solid waste" under the LIS CMP, but the LIS CMP does not define "solid waste." Assuming only for the purpose of this discussion that dredged material *is* a "solid waste" under the LIS CMP, EPA still finds the proposed action fully consistent with Policy 8.1.¹³ First, EPA's proposed action does not authorize any dredging, but, consistent with the policy, *before* any dredging can be undertaken, the sediments must be tested and a management plan authorized. Sediments found unsuitable for open-water disposal cannot be placed at a designated site. Second, consistent with the policy's preference for recycling or reuse of solid wastes, open-water disposal of dredged material is allowed under EPA regulations only when no practicable alternatives with less adverse environmental effects are available. Moreover, EPA's proposed site restrictions are geared to strengthen the process for identifying and developing such practicable alternatives to minimize the need for open-water disposal in the waters of Long Island Sound. Third, and also consistent with Policy 8.1, open-water placement of dredged material is managed to prevent accidental release of the materials at any locations other than the approved disposal sites. Navigation equipment and barge technology is used that is capable of precise placement of the dredged material at specific locations within a disposal site. The site restrictions will also prohibit open-water placement of material during risky sea conditions. Finally, only suitable material (*i.e.*, material that satisfies EPA's sediment quality criteria in 40 C.F.R. Part 227) is allowed for open-water placement, and the ELDS (or any other designated site) will be properly managed and monitored under an SMMP. *See* 81 Fed. Reg. 24755, 24757, 24759.

As discussed in the LIS CMP's explanatory text (p. 82), Policy 8.3 urges the prevention of releases to the environment of hazardous and/or toxic pollutants, including radionuclides, that would harm the environment or the health of people or other types of living organisms. The LIS CMP further explains that Policy 8.3 calls for actions to:

¹³ The MPRSA appears to distinguish between dredged material and solid waste. *See* 33 U.S.C. § 1402(c). *See also* 33 U.S.C. § 1412a(b); 40 C.F.R. § 227.13. *Cf.* 40 C.F.R. § 261.4 (EPA RCRA regulations excluding "dredged material" subject to permit/authorization under MPRSA § 103 from definition of "hazardous waste").

[p]revent environmental degradation due to persistent toxic pollutants by: limiting discharge of bioaccumulative substances, avoiding resuspension of toxic pollutants and hazardous substances and wastes, and avoiding reentry of bioaccumulative substances into the food chain from existing sources.

LIS CMP, p. 82. EPA's action is fully consistent with Policy 8.3, as EPA's regulations require chemical and biological testing of dredged material to ensure that toxic, bioaccumulative or otherwise hazardous materials, including any materials with dangerous levels of radiological contamination, are not placed at open-water disposal sites. *See* 40 C.F.R. §§ 227.5 and 227.6. Aspects of Policy 8.3 related to pesticide use and "the correction of unregulated releases of substances hazardous to the environment" are not relevant to EPA's action.

It is not clear to EPA that the LIS CMP policies discussed immediately above constitute "enforceable policies" of the state's coastal management program under NOAA regulations. *See* 15 C.F.R. § 930.11(h) ("An enforceable policy shall contain standards of sufficient specificity to guide public and private uses."). Regardless of this uncertainty, however, EPA has fully considered these policies as urged by 15 C.F.R. § 930.39(c).

5. Policies 10 and 10.6

NY DOS's January 15, 2016, letter suggests that EPA should consider whether the designation of disposal sites and continued placement of dredged material at the sites "may impact" LIS CMP Policies 10 and 10.6. These policies provide as follows:

Policy 10: Protect Long Island Sound's water-dependent uses and promote siting of new water-dependent uses in suitable locations.

10.6: Provide sufficient infrastructure for water-dependent uses.

Based on a review of their text, as well as the supporting explanatory material in the LIS CMP, EPA understands that these policies are intended to protect and promote water dependent uses of Long Island Sound's coast. EPA's proposed action is fully consistent with these policies of the LIS CMP. The goals of the specified policies are summarized below.

Policy 10 (p. 84) seeks to "protect existing water-dependent commercial, industrial, and recreational uses and to promote suitable uses of maritime centers ... [and] to enhance the economic viability of water-dependent uses by ensuring adequate infrastructure for [them] and their efficient operation" The explanatory text further notes that there are nearly 200 water-dependent uses along the Long Island coast and they are "vital to the economic health of the region."

As indicated by its text, Policy 10.6 is specifically focused on helping to ensure that adequate infrastructure is provided for water-dependent uses. The explanatory text for the policy (p. 85) specifies several goals relevant to EPA's proposed action. These goals are as follows:

[p]rotect and maintain existing public and private navigation lanes and channels at depths consistent with the needs of water-dependent uses. Provide new or expanded navigation lanes, channels, and basins when necessary to support water-dependent uses.

Use suitable dredged material for beach nourishment, dune reconstruction, or other beneficial uses.

Avoid placement of dredged material in Long Island Sound when opportunities for beneficial reuse of the material exist.

Allow placement of suitable dredged material in nearshore locations to advance maritime or port-related functions, provided it is adequately contained and avoids negative impacts on vegetated wetlands and significant coastal fish and wildlife habitats.

LIS CMP, p. 85. Additional goals of this policy are to avoid water and shore uses that would impede navigation, prioritize existing commercial navigation when determining rights over navigable waters, provide services and facilities to facilitate navigation, foster water transport of cargo and people, and maintain stabilized inlets at certain specified coastal locations. *Id.*

EPA's proposed action is fully consistent with Policies 10 and 10.6. Designating the ELDS (or the NBDS or CSDS) with the proposed restrictions will help to achieve all of the goals of these policies. Providing an appropriate open-water disposal site for management of dredged material will allow for dredging necessary to maintain existing navigation channels for water-dependent uses and for any new or expanded channels or basins when practicable alternative methods of managing the dredged material are not available. An open-water disposal site is needed because it is not currently anticipated that upland disposal, beneficial uses, and other means will be sufficient to accommodate the full volume of sediment that will require management. That said, only material that is deemed suitable for open-water disposal based on the application of EPA's sediment quality criteria, *see* 40 C.F.R. §§ 227.5 and 227.6, will be authorized for placement at the disposal sites. Moreover, use of the ELDS (or the other site options) would only be allowed when there is no practicable alternative to open-water placement.

Consistent with Policy 10.6, EPA's site designation regulations are geared to ensure that beach nourishment, dune reconstruction and other beneficial use options are used whenever practicable. Regulatory decisions on whether sediments are suitable for these beneficial use options would be made on a project-by-project basis. Similarly, and consistent with Policy 10.6, for sediments unsuitable for open-water disposal, EPA's action will promote management of the material in near-shore containment facilities or confined aquatic disposal sites, when appropriate. Again,

decisions about whether material is suitable for open-water disposal or needs to be managed in some sort of containment facility, and whether such a containment facility can be properly sited, constructed and managed, will all be subject to separate regulatory review.

Once again, it is not clear to EPA that the LIS CMP policies discussed immediately above constitute “enforceable policies” of the state’s coastal management program under NOAA regulations. *See* 15 C.F.R. § 930.11(h) (“An enforceable policy shall contain standards of sufficient specificity to guide public and private uses.”). Regardless of this uncertainty, however, EPA has fully considered these policies as urged by 15 C.F.R. § 930.39(c).

6. Policies 11 and 11.1

NY DOS’s January 15, 2016, letter suggests that EPA should consider whether the designation of disposal sites and continued placement of dredged material at the sites “may impact” LIS CMP Policies 11 and 11.1. These policies provide as follows:

Policy 11: Promote sustainable use of living marine resources in Long Island Sound.

11.1: Ensure the long-term maintenance and health of living marine resources.

In addition, NY DOS’s April 25, 2016, Conditioned Concurrence for the CLDS and WLDS designations also identified Policy 11.2 as being relevant. It reads as follows:

11.2: Provide for commercial and recreational use of the Sound's finfish, shellfish, crustaceans, and marine plants.

Based on a review of their text, as well as the supporting explanatory material in the LIS CMP, EPA understands that these policies are intended to help ensure the long-term, sustainable use and health of aquatic organisms in the waters of Long Island Sound. EPA’s proposed action is fully consistent with these policies of the LIS CMP. The goals of the specified policies are discussed below.

Policies 11, 11.1 and 11.2 are intended to help promote the sustainable use of the living resources of the waters of Long Island Sound (e.g., fish and shellfish) to ensure that they contribute to the social and economic well-being of Long Island now and into the future. The explanatory text accompanying these policies (p. 86) explains that such living resources are commercial and recreational resources that contribute to the economy of the region and the state, and the social and economic well-being of many of its residents. The text further notes the importance of maintaining the long-term health, diversity and abundance of those living resources through the active state efforts to protect and restore habitat and water quality and sustainably manage use of living resources.

EPA's proposed action is fully consistent with these policies. EPA's action has nothing to do with the direct use or management of Long Island Sound's living resources. The proposed site designation also would not authorize any particular dredged material disposal operations. Any proposal for such disposal would be subject to its own case-specific regulatory review. At the same time, EPA considered potential indirect impacts to marine organisms and their habitat, including their spawning habitat, as well as potential impacts to fishing activity, and concluded that the proposed use of the ELDS (or the NBDS or CSDS) would not have harmful effects. EPA also determined, and NOAA concurred, that the site designations would not have adverse effects on "essential fish habitat" under the Magnuson-Stevens Fishery Conservation and Management Act. EPA's proposed designation also would not adversely affect any species listed as threatened or endangered under the ESA.

As stated previously, unsuitable material will not be authorized for placement at either disposal site, and the effects of the placement of suitable material at the sites will be insignificant. *See, e.g.,* 70 Fed. Reg. 32502-32514 (June 3, 2005). Even suitable material will only be placed at the sites when no practical alternatives to open-water disposal are available, and such placement can only occur during the months from October to April due to the application of seasonal dredging windows that preclude dredging during the most sensitive months for aquatic life.

With regard to the potential indirect impacts associated with dredging operations, EPA's site designations do not authorize any particular dredging project. Therefore, there is no way to assess the impacts of any such hypothetical individual projects. Yet, EPA notes that by seasonally limiting dredging activities using "dredging windows" to limit dredging activities to the months of April to October in order to avoid key spawning periods, significant adverse effects are avoided. *See* 70 Fed. Reg. 32503-32504. Further, individual dredging proposals which would involve disposal at the ELDS (or other sites) under the MPRSA are subject to case-specific regulatory review which would include evaluation under the Essential Fish Habitat provisions of the Magnuson-Stevens Fishery Conservation and Management Act, the ESA and the CZMA. Finally, and as previously discussed, extensive monitoring of dredged material disposal sites in Long Island Sound has found no evidence of long-term impacts to benthic processes or habitat conditions. Therefore, EPA is confident that any indirect effects of a site designations arising from potential future dredging projects will not adversely affect the abundance, diversity, or overall long-term health of living resources of New York's Long Island coastal zone.

Thus, EPA's proposed site designations are fully consistent with LIS CMP.

As stated previously with regard to other policies, it is not clear to EPA that the LIS CMP policies discussed immediately above constitute "enforceable policies" of the state's coastal management program under NOAA regulations. *See* 15 C.F.R. § 930.11(h) ("An enforceable policy shall contain standards of sufficient specificity to guide public and private uses."). Regardless of this uncertainty, however, EPA has fully considered these policies as urged by 15 C.F.R. § 930.39(c).

7. Local Waterfront Revitalization Programs

In its letter of January 15, 2016, NY DOS states that Local Waterfront Revitalization Programs (LWRPs):

... are a local refinement of the NYS CMP and LIS CMP ... [containing] coastal policies that reflect the unique attributes and characteristics of each community and are used for local, state, and federal consistency reviews ...[, and that in] addition to EPA's Sound-wide assessment of its proposed activities using the 13 LIS CMP coastal policies, the activities must also be evaluated using the coastal policies of each Long Island Sound LWRP to assess the coastal effects of the proposed activities on each community.

NY DOS also identified the following ten (10) communities as having LWRPs relevant to EPA's action: Village of Bayville, Village of Head of the Harbor, Village of Larchmont, Village of Lloyd Harbor, Town of Mamaroneck, Village of Mamaroneck, Village of Nissequogue, City of Rye, Town of Smithtown, and Town of Southold. *See* http://www.dos.ny.gov/opd/programs/WFRevitalization/LWRP_status.html.

Consistent with this direction, EPA evaluated its proposed action under these relevant LWRPs and has determined its action to be consistent to the maximum extent practicable with the relevant LWRPs. EPA determined that none of these LWRPs apply to EPA's proposed designation of the ELDS, but that to the extent they are applicable, the site designations and proposed amendments are fully consistent with them. To the extent that the LWRPs could be viewed as addressing dredging, they speak to dredging or dredged material placement *within the LWRP areas*. EPA's proposed designation of the ELDS (or the NBDS or CSDS) would not be covered by the LWRPs because all of these sites are outside these areas.

In addition, as explained farther above, the proposed designation of the ELDS (or the NBDS or CSDS) would have no direct effects on New York's coastal resources or uses because EPA's action would not authorize the open-water disposal of any dredged material. Designation of the ELDS would only provide an open-water disposal *option* for suitable dredged material when no practicable alternative to open-water disposal is available. Decisions about whether or not to allow open-water disposal of particular dredged material at the ELDS (or the NBDS or CSDS) would be subject to a separate permitting process.

As also explained above, the proposed disposal site designation would not have indirect effects of any significance on New York's coastal resources or uses resulting from the placement of material at the ELDS (or the NBDS or CSDS) consistent with the proposed site use restrictions. Similarly, the proposed disposal site designation would not have indirect effects of any significance on New York's coastal resources (including those lying within an LWRP area) or uses resulting from dredged material being transported through New York waters to the disposal

site in Connecticut. EPA has individually considered each of the relevant LWRPs, as directed by NY DOS, but these conclusions apply for each across-the-board.

To the extent that designation of the ELDS might have an indirect effect on the waterfront of a local community by facilitating needed dredging as a result of providing an open-water location to safely place the sediments in the absence of a practicable alternative for managing the material in another way, any such effects would be expected to be beneficial to the coastal resources and their uses. Furthermore, the disposal site designation does not regulate dredging activities. Dredging proposals are subject to separate, case-specific review and regulation under federal, state and local requirements. This would include application of the state's coastal zone management program, including the LIS CMP and any relevant LWRPs. Therefore, EPA presumes that a community would undertake a dredging project (or allow one to proceed) only if the dredging is consistent with the LWRPs and no adverse environmental effects of any significance would occur.

Again, as explained above, EPA's proposed action would not authorize the open-water disposal of any dredged material. It would only provide an open-water disposal option for suitable dredged material when no practicable alternative to open-water disposal is available. EPA's proposed action also provides procedures that will strengthen the RDT process for identifying possible practicable alternatives to open-water disposal, and provides standards to help identify the types of material that may be suitable for various alternative management methods. Further, EPA has proposed site use restrictions urging federal, state and local regulators to use their authorities to minimize sediment loadings to the waters of Long Island Sound. *See* Proposed 40 C.F.R. §§ 228.15(b)(4)(vi)(D). Taken together, these proposed regulatory amendments are geared to reduce or eliminate the open-water disposal of dredged material into the waters of Long Island Sound to the extent practicable.

As EPA explained above, in NY DOS's April 25, 2016, Conditioned Concurrence for the CLDS and WLDS designations, NY DOS indicated that the LWRP policies essentially overlapped those of the LIS CMP and that no separate discussion of the LWRPs was necessary. Therefore, to the extent that any of these LWRPs are regarded to apply to EPA's proposed action, EPA has already effectively discussed them in the discussion of the policies of the LIS CMP.

Once again, it is not clear to EPA that the policies in the LWRPs, which are discussed in more detail below, constitute "enforceable policies" of the state's coastal management program under NOAA regulations. *See* 15 C.F.R. § 930.11(h) ("An enforceable policy shall contain standards of sufficient specificity to guide public and private uses."). Regardless of this uncertainty, however, EPA has fully considered the potentially relevant policies in the pertinent LWRPs, as urged by NY DOS and 15 C.F.R. § 930.39(c) ("Federal agencies should give consideration to management program provisions which are in the nature of recommendations.").

As noted above, NY DOS earlier identified the following ten (10) communities as having LWRPs relevant to EPA's proposed actions regarding the western, central and eastern regions of the Sound: Village of Bayville, Village of Head of the Harbor, Village of Larchmont, Village of Lloyd Harbor, Town of Mamaroneck, Village of Mamaroneck, Village of Nissequogue, City of Rye, Town of Smithtown, and Town of Southold. *See* http://www.dos.ny.gov/opd/programs/WFRevitalization/LWRP_status.html. Only the Town of Southold's LWRP is even potentially relevant to the current proposal to designate the ELDS because the other LWRP areas are too distant from the ELDS and the eastern region of the Sound to be implicated. Although a separate discussion of the Southold LWRP is not necessary because of the above discussion of the LIS CMP, EPA discusses the Southold LWRP below just to be doubly sure of the adequacy of this determination.

A. LWRP for Town of Southold

A LWRP has been developed for the Town of Southold. The LWRP applies to natural, public, and developed waterfront resources of these communities that lie along Gardiners Bay, the Peconic Estuary, and Long Island Sound. Southold's coastline lies approximately 22 nautical miles from the ELDS, 20 miles from the NBDS, and 10 nautical miles from the CSDS. *See* 81 Fed. Reg. 24751-24752; EPA's April 2016 DSEIS, Fig. 3-1; Town of Southold LWRP, Section I.

Section IV of the LWRP provides a Harbor Management Plan that identifies a variety of dredging needs associated with providing boats with safe, adequate navigational channels and mooring locations. This section also indicates that inter-agency coordination and planning are needed to facilitate such dredging in an effective way without causing adverse environmental effects. EPA's proposed action does not authorize any dredging, but it could facilitate dredging by providing an open-water disposal option for any suitable dredged material for which no practicable alternative management methods are available.

Section III of the LWRP presents coastal management policies. Policy 4 is directed at avoiding harms from erosion, stating that, "[b]arrier beach landforms should be maintained by using clean, compatible dredged material, when feasible, for beach nourishment, offshore bar building, or marsh creation projects." *Id.*, pp. III-7 to III-8. *See also id.*, p. III-9, III-11, III-14. Policy 5 is directed at protecting water quality, both drinking water and surface waters, by controlling discharges. It calls for the protection of water quality from adverse effects from dredging and dredged material disposal. *Id.*, pp. III-14, III-19. Policy 8 calls for minimizing environmental degradation from solid wastes, *id.*, p. 31, and it calls for "... the dredging of toxic material from underwater lands and the deposition of such material shall be conducted in the most mitigative manner possible so as not to endanger fish and wildlife resources, in either the short or long term." *Id.*, p. 33. Under Policy 10, the LWRP suggests that marinas and other water-dependent uses be sited in locations that will minimize the need for dredging. *Id.*, p. III-47. Policy 10 also indicates that adequate infrastructure should be provided for water dependent uses, stating that:

[d]redging is an essential activity but with costs and impacts that require it to be undertaken only to the extent necessary to meet the current and future needs of water-dependent uses of the Town of Southold. The Town of Southold will work with ... [others] to:

1. Protect and maintain existing public and private navigation lanes and channels which provide access to the Town's water-dependent uses.
2. Maintain necessary public and private channels and basins at depths consistent with the needs of water-dependent uses. Discontinue or modify navigation channel or basin maintenance dredging where project depths exceed vessel needs.

* * *

4. Provide new or expanded navigation lanes, channels, and basins when necessary to support new, or expansion of existing, water-dependent uses. Dredging may be necessary to support a water-dependent use when:

- a. an existing use, or a new use in a suitable location, would be generating vessel traffic that requires the navigation infrastructure,
- b. the amount of dredging, including the project depth, is consistent with shipping needs, and
- c. an alternative site with access to adequate water depth or less need for dredging is not available.

5. Avoid placement of dredged material in Long Island Sound when upland alternatives exist.
6. Put clean dredge material to beneficial use for either beach nourishment or dune reconstruction.

Id., p. III-48 to III-49. Policy 10 further calls for “harbor management of Mattituck Inlet and Creek” to, among other things, “[m]aintain navigation, including use of the Town's only federal harbor, including the federal anchorage, maintenance dredging, and the protection of navigation channels.” *Id.*, pp. III-50 to III-51.

After considering the LWRP and its potentially relevant policies, EPA has determined that designation of the ELDS (or the NBDS or CSDS) as discussed above with regard to the LIS CMP, would be fully consistent with the policies of the LWRP of the Town of Southold. EPA’s site designation neither authorizes dredging nor dredged material disposal. Separate case-specific approvals are needed to authorize dredging and dredged material disposal. That said, under the MPRSA and the proposed site use restrictions, only suitable material (*i.e.*, material satisfying EPA’s sediment quality criteria regulations) can be authorized for placement at the sites, and placement would be allowed only when there is no practicable alternative available for managing

the materials. EPA's proposed site use restrictions will strengthen the RDT process for determining whether practicable alternatives exist, and will provide standards to help direct material to any appropriate alternative means of managing the material that may be available (*e.g.*, such as beach nourishment or bar nourishment). The site designation also may help facilitate needed dredging to occur by providing an open-water placement alternative for suitable material when no practicable alternative exists. At the same time, placement of material at these sites will have no adverse effects on the uses or resources of the LWRP area. Thus, EPA's proposed action is fully consistent with the LWRP.